MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 6, 1989, at 10:00 a.m., Room 325

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer, Senator Boylan, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 151

Presentation and Opening Statement by Sponsor:
Representative Swift, House District 64 said HB 151 was a revised branch banking bill, and was a compromise bill. He stated that if HB 151 was passed, it would be an instrument through which small independent banks could become more competitive. He said the bill included any commercial bank, savings bank, trust company, investment company, or any other types of corporations who were carrying on the business of banking, trust company, or investment company. He stated the legislation was restricted to in-state institutions, as it did not allow institutions from another state to acquire by consolidation or merger, any institution doing business in this state. He said HB 151 allowed for one detached facility, and the use of satellite facilities within the county, or adjoining county where there was no bank or branch bank located. He stated the bank board would have to adopt rules necessary for administration and operation, but the act would not require any corporate tax structure change.

List of Testifying Proponents and What Group They Represent:

John Cadby - Executive Vice President, Montana Bankers Association, Helena, Montana
Mark Safty - Attorney, Billings, drafter of the bill
Gary Carlson - CPA, Anderson-ZurMuehlen & Company, Helena, Montana
Lynn Grobel - President of Montana Bankers Association President First National Bank Glasgow
Jim Bennett - Immediate Past President of Montana Bankers Association
President, First Citizens Bank, Billings
John Witte - President, Traders State Bank, Poplar
John D. Lawrence - President, Farmers State Bank, Worden, Montana
Sam Noel - President, Citizens State Bank, Hamilton
Sam Dasios - Businessman, Troy, Montana
Earl Lovick - Director, First National Bank, Libby
Bob Sizemore - President, Western Bank of Chinook
Larry Moore - Cashier, Stockmen's Bank, Cascade
Bill Thorndal - President, First Security Bank, Laurel

List of Testifying Opponents and What Group They Represent:

Roger Tippy - Montana Independent Bankers Association
Keith Colbo - Montana Independent Bankers Association
Dick Maurer - Valley Bank, Kalispell, Montana
John Buchanan - President, Fidelity Savings and Loan, Great Falls, Montana

Testimony: Mr. John Cadby presented Exhibits #1, #2, and #3, and briefly discussed the information they contained. His testimony included a summary of HB 151, as it had been amended in the House, and the Montana Bankers Association's response to the Montana Independent Bankers proposed amendments. He said he would allow the individual proponents of the bill to elaborate on the individual areas of testimony.

Mark Safty, drafter of HB 151, presented testimony regarding federal laws which allowed the establishment, maintenance, and operation of branch banks, within certain circumstances. He reviewed the various statutes, acts, and court rulings surrounding the branch banking issue. (See Exhibit #4)

Gary Carlson gave an evaluation of HB 151, as to its fiscal impact to Montana Counties. He presented a review of the manner in which corporate license tax returns would be filed, and cited the corporate tax laws which would govern a merger. He stated that HB 151 would appropriately conform to taxation of merged banks (and branches) to the taxation of other merged corporations in Montana. (See Exhibit #5, #22, and #23)

Lynn Grobel termed HB 151 a bank restructure act, which he supported. He said he wished to emphasize two main points. He said the heart of the bill was the merger-consolidation section, and branching. He said the second was the overwhelming support the bill had received from bankers in Montana. He stated HB 151 was a good, progressive, and timely piece of legislation, and urged the committee's support. (See Exhibit #6)

Jim Bennett reiterated the favorable aspects of HB 151, and asked for passage of the bill.

Jim Witte said he didn't have any plans for using the legislation, but he supported it's passage. (See Exhibit #7)

John Lawrence expressed his support of the proposed legislation, and cited some of the advantages of branch banking.

Sam Noel said he felt the banking structure in Montana was too restrictive, and expressed his support of HB 151. (See Exhibit #8)

Sam Dasios said he was a businessman from Troy, and their town wanted a branch bank. He said it was inconvenient, because they had to travel to Libby to do their banking. He said HB 151 would allow Libby to put a branch bank in Troy.

Earl Lovick said Libby wanted to put a branch bank in Troy. He said their bank was losing accounts, by not having a bank in Troy, He stated those were dollars that weren't available for loans, and tax dollars that were being lost, etcetera. He urged their support of HB 151.

Bob Sizemore stated his support of HB 151, and discussed the advantages of a branch banking system. He urged the committee to pass HB 151.

Larry Moore said he was there to offer support from the First Security Bank of Laurel. He said they were in favor of the legislation, and favored the branch banking system.

Bill Thorndal reiterated the points in favor of branch banking, and their support of the legislation before the committee. He said he favored passage of HB 151.

Roger Tippy expressed opposition to HB 151, and stressed the points they were opposed to, within the legislation. He read his testimony for the record. (See Exhibit #9)

Keith Colbo spoke in opposition to HB 151, and testified as to his experience as Director of the Montana Department of Commerce, and position on the Montana State Banking Board. He submitted his written testimony for the record. (See Exhibit #20 and #21)

Dick Maurer said he opposed HB 151, because there were certain risks with deregulation. He cited one good example of the ill effects of deregulation, was what had happened to the airlines in Montana. (See Exhibit #10) He presented an article from the May 25, 1988 Wall Street Journal, as another example of his concern over branch banking. (See Exhibit #11)

John Buchanan said he opposed HB 151, because he didn't think the legislation presented the right approach to branch banking. He said he felt total branching would better serve the consumer. He stated there was a present trend to consolidation of smaller banks, and larger banks were the only ones who had the lending capacity needed for major loans. (See Exhibit #24)

<u>Questions From Committee Members:</u> Senator Williams asked what the membership of the Montana Bankers Association was, excluding the Minnesota Twins? John Cadby said there were 21 banks in the First Bank and Norwest Bank Systems, and their membership included 157 member banks, of the 168 banks in Montana. He said of those 157 banks, 136 were independent banks, or Montana in-state holding company banks.

Senator Lynch said his area's main concern of two years ago was the possible loss of county level taxes. He asked if there would be a revenue loss with HB 151. Jerry Foster, Administrator of the Natural Resources Corporation Tax Division, said there could be all sorts of different scenarios of who would lose or gain. He said they thought the bill was drafted as close to neutral as possible, but when the banks merged, some counties would benefit, and some may lose. He said that was something they could not ascertain, and there could also be some loss in state revenue.

Senator Williams asked for a list of the towns mentioned earlier? Lynn Grobel said he did have a list of the small towns who could possibly have a branch bank, with passage of HB 151. (See Exhibit #12)

Senator Lynch asked about the provision which limited the new area receiving a branch bank, to be limited to only one branch bank? He asked, with considerable population growth, would they still be limited to one? John Cadby said the bill's provisions, banks had to seek approval from the State Banking Board to put in a branch, in any barren town. He said most barren towns were so eager to get a branch, that even one would be an improvement. He said he suspected that if legislature saw a need to expand the bill, down the road in a couple years, it could be addressed at that time. He said the bill didn't preempt anyone from applying for a bank charter for a unit bank.

Senator Lynch asked why the limit on the first come, first serve branch? Mr. Cadby said there theoretically could be two branch banks in a town, if the first was a state chartered branch, and the second application came from a national bank. He said national banks applied for their branch approvals from the federal regulators.

Chairman Thayer asked the bill's drafter if he would like to respond to Roger Tippy's testimony, regarding the vague language concerning what an unincorporated city was, and the confusion it may cause? Mark Safty said there was extensive time and research involved in the definition. He said the definition of city included in the bill, was the definition derived from a number of judicial decisions by the Montana Supreme Court. He said they felt it was the clearest possible definition available, under the circumstances.

Senator Weeding asked what the tax implications were, if a bank in one county merged with another bank in a neighboring county, and one of the banks then became a branch? He asked what the implications would be to the county, in which the branch bank was situated? Mr. Cadby said the counties and cities had not opposed the bill in the House or the Senate, because both organizations had no fear of HB 151. He said the amount of taxes paid to local government, was based on income taxes. He said banks and savings and loans were the only ones who shared the income taxes they paid to the state, with local government, and that sharing was totally based on their profitability. He said, for that reason, it was totally impossible to predict future profitability of the bank or branch. He said the counties had asked for simultaneous mergers of all banks under common ownership, so that a bank with a loss could not be left out of the merger, that would use up its net operating losses carried forward. He said that was good for the counties and cities, and that was how the bill had been drafted. He said the amendments presented by the Independent Bankers Association, allowing multi-corporations on a phase in merger, destroyed the simultaneous merger concept, and would erode county and city taxes.

Closing by Sponsor: Representative Swift said he thought the opponents were making suppositions as to what would happen with this legislation, and said he felt the banks were capable of making their own decisions. He reminded everyone that the bill would require and provide for a review by the banking board. He said he felt Mr. Colbo had changed his position entirely, since the time he was head of the Department of Commerce. He said he also agreed with Mr. Buchanan that he would like to see open branch banking, however he reminded the committee that a majority of the Montana Bankers Association preferred limited branching. He stated that if the bill worked well, there may be cause to expand branch banking at a later time. He said he thought HB 151 was straight forward, and showed intensive review of all existing laws and case histories. He asked the committee's assistance in moving forward, within the banking industry.

DISPOSITION OF HOUSE BILL 151

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 191

Presentation and Opening Statement by Sponsor: Representative Stang, House District 52, said he felt HB 191 was a more realistic approach to serving the communities that had been discussed in the previous bill's testimony. He said he thought only two or three of those communities would have a branch bank, but a majority of them would be better served by HB 191. He said people living in rural Montana would like to have teller facilities in their banks. He stated, presently, small town store owners often ended up doing the check cashing services. He said he felt HB 191 economically approached branch banking more realistically. He cited HB 191 as better serving the needs of the consumer.

List of Testifying Proponents and What Group They Represent:

Roger Tippy - Montana Independent Bankers
Fred Prevost - Intern, Montana Independent Bankers
Paul Caruso - Chairman of the Board, of First Security Bank, Helena, Montana
Frank Stock - Chief Executive, First Security Bank, Polson, Montana
Mike Burr - Senior Vice President, First Security Bank, Kalispell, Montana

List of Testifying Opponents and What Group They Represent:

John Cadby Executive Vice President, Montana Bankers Association
John Buchanan - President, Fidelity Savings and Loan, Great Falls, Montana
Mark Safty - Attorney, Billings, Montana
Lynn Grobel - President, Montana Bankers Association First National Bank, Glasgow, Montana
Marty Olsson - Vice President, Ronan State Bank
John Witte - President Traders State Bank, Poplar, Montana
Sam Noel - President, Citizens State Bank, Hamilton, Montana
Sam Dasios - Businessman, Troy, Montana
Earl Lovick - Director, First National Bank, Libby, Montana
Jim Bennett - President, first Citizens Bank, Billings, Montana
Bob Sizemore - President, Western Bank, Chinook, Montana

Testimony: Roger Tippy said he was speaking in support of HB 191, because it was a more limited, carefully drawn approach to providing banking service for remote communities. He cited sections 2 and 3, which addressed state savings and loan institutions. He said he felt that if federally chartered savings and loans were allowed branching, state chartered savings and loans should be allowed the same privilege. He said HB 191 was submitting, to legislature, the policy that state thrifts and state banks should be on an equal footing with whatever branching was authorized. He said HB 191 provided a more economical approach to providing the basic banking services needed, and required any added branch service be at least ten miles away from any bank or savings and loan. He said the language and concept for HB 191 was drawn from the limited branching statute of North Dakota.

Fred Prevost said North Dakota had banking services in nearly every community, in the capacity of paying and receiving stations. He said these facilities were not banks or branches, but an equivalent to the extended teller facilities which HB 191 proposed. He said he felt smaller communities could not economically support a full service facility. He stated he felt Montana consumers would benefit from HB 191, and urged passage. (See Exhibit #19)

Paul Caruso said he favored HB 191, which was a teller facility expansion of banking in Montana. He stated HB 191 was designed specifically for consumer service. He read his written testimony for the record. (See Exhibit #13)

Frank Stock said HB 191 would increase the distance an ATM could be located from a bank, in regard to both an incorporated city or an unincorporated area. He said the new limitations would be county wide, or twenty-five miles form the main banking office, and not closer that three hundred feet from someone else's main banking house.

Mike Burr submitted his testimony, and analyzed the two bills being heard. Mr. Burr stated he was speaking in support of HB 191. He said he was not against changing Montana's banking laws, nor did he feel communities should be denied local banking services. He stated that he did, however, oppose the language contained in HB 151, and it did not help Montanans. He said the amendments to HB 151 may be discriminatory, and may be challenged in court. (See Exhibit #14)

John Cadby said he was submitting a comparable analysis of HB 151 and HB 191, and a list of reasons why HB 191 should not pass. (See Exhibits #15 and #16) He stated that the paying and receiving stations in North Dakota did make loans, and they were not teller facilities, but had the same powers as a branch. He said there was no profit incentive in HB 191, because it was too restrictive to be convenient. He said the intent of the bill was contradicted by the amendments. He said HB 191 also discriminated against state chartered savings and loans. (See Exhibits #15 and #16).

John Buchanan said he was very opposed to HB 191, because it appeared that one Mississippi court ruling was being concluded as Montana Law. He said proponents of HB 191 had chosen to eliminate state chartered savings and loans, but he wanted to remain a state charter. He said the bill would force him to become a federally chartered savings and loan, and have branching. He said he did not want to become a federal charter.

Mark Safty said he was appearing at the request of the Montana Banker's Association, to speak on the matter Mr. Buchanan had referred to. He said the McFadden Act said that national banks have to be able to branch the same way state banks branch, and state chartered savings and loans are included in the definition of state banks. He said the Mississippi decision had decided that, because state chartered savings and loans had branching powers, and constituted a significant part of the market, other banks had to be allowed to branch also. He said that Montana was not in Mississippi, or the jurisdiction of the fifth circuit. He stated their had been repeated statements that the ninth circuit authority, Montana's jurisdictional location, was contrary to the Mississippi case, and did not want to create the same conflict. (See Exhibit #17)

Lynn Grobel said he stood opposed to HB 191. He said the bill appeared to be a watered down version of parts of HB 151. He said he felt HB 191 was unnecessary legislation, and asked for the bill to be killed.

Martin Olsson said he was submitting his prepared testimony, but was going to deviate to speaking on the testimony presented during the hearing. (See Exhibit #18) He referenced the testimony about Saint Regis' banking problem, and said he did not feel the legislation would improve their situation. He said their only help would be competition. He said the holding company banks in Montana had a defined structure decision making program, and that was not going to change with consolidation or merger. He said that if consolidation and merger was allowed, it would allow small community banks to be involved in more communities, and would not cause the small banks to lose control. He reiterated, that competition was the key, and asked for a do not pass on HB 191.

John Witte said we have to grow with the rest of the nation, and we are one of two states in the United States that does not have some type of branching, merging or consolidation of our banks. He said it was time to get into the main stream of life.

Sam Noel said he would like to address Mr. Burr's comment on the lack of opportunities in branch banking. He said he had started at the bottom, in a Seattle branch bank, and had worked his way to the top. He said a branch bank was important to the rest of the bank, and was not a faceless nameless organization. He said that just because Norwest Bank and First Bank System weren't there, it didn't mean they were not interested in HB 191, or did not say that they represented the interests of HB 151. He said they represented themselves, and there were a large majority of people in favor of the Montana Bankers Association bill. He said he strongly urged HB 191 be killed.

Sam Dasois said HB 191 served no purpose, and asked the bill be killed.

Earl Lovick said he was speaking in opposition to HB 191 because they believed its passage would be of little help in providing banking service to small communities. He said the services it would offer were too limited, and didn't believe it would meet the desires of the communities needing banking service.

Jim Bennett said he had originated plans for the Council of the Montana Bankers Association to get together and work out a compromise. He stated, part way through the process, the Montana Independent Bankers Association held an executive meeting and walked away from the table, with a refusal to negotiate. He said that now they were before legislature, asking it to do what they had refused to do for themselves. He said HB 191 had been introduced to cloud the issue, and it provided only a small part of what HB 151 provided. He urged the committee to let HB 191 die.

Bob Sizemore said he opposed HB 191, because it did very little to make loans, create jobs, enhance competition, or a healthy economy. He said they could not determine what reason Mr. Maurer would have had for testifying against HB 151. He also said discussions with regulators had revealed a shortage of talent needed to run Montana banks, so he didn't see how Mr. Burr felt this could cut down anyone's chances of success in banking employment.

<u>Questions From Committee Members:</u> Senator Lynch asked if Mr. Buchanan was opposed to both bills? Mr. Buchanan said he was opposed to both, with a sharper opposition to HB 191, and a feeling that HB 151 didn't go far enough. He said they may just as well allow full branching.

Senator Lynch asked for an explanation of the city limit situation. He said HB 151 allowed placement of a detached teller facility in any community, up to three thousand feet beyond the city limits.

Senator Lynch said that was a problem, because Butte, Silver Bow, or Anaconda didn't have any city limits. Mark Safty said HB 151's definition of city limits read the way it did, partly because of that very situation. He said a prior case decision had defined the limits of those cities, and he felt the determination could be made under that language.

Senator Lynch asked if any of the bankers, who didn't vote for HB 151, were left in the Montana Bankers Association? Mr. Cadby said there were 168 banks in Montana, and they still had their 157 members. He said most of the opposition to HB 151 was coming from the fifteen banks who did not belong to the Montana Bankers Association. He said there hadn't been a rift before, because the MBA didn't enter the debate until a majority of all banks wanted some help to survive.

Senator Williams asked where credit unions fit into this scene, and was that an issue which would need addressed? Roger Tippy said he hoped that wasn't the case. He said a large part of HB 191 was to address the Mississippi decision, which only equated savings and loans with commercial banks. He said a savings and loan was rather like a bank, although more limited, but a credit union's likeness was a little bit further away. He said they didn't see any suggestion that anyone would interpret the McFadden Act to include credit unions.

Chairman Thayer asked if it was true, the Mississippi court case had been a lower court decision that went to the supreme court, and the supreme court turned it back to the lower court? Mr. Tippy said yes, the supreme court had denied right of the fifth circuit's decision.

Chairman Thayer stated that usually, when a supreme court decision was spoken of, it had some bearing, but a decision turned down by the supreme court really had no bearing on what we would do. Mr. Tippy said, with respect, the comptroller of the currency enforced and interpreted federal statutes, and that should be the same in all fifty states. He said that if Mr. Safty's information was more current than his, then maybe the federal agency reading the McFadden Act would not come to the same functional equivalency termination for Montana. He said they wouldn't be certain of that, until someone had an application rejected by the comptroller.

Senator Weeding asked if there was any adequacy or applicability of HB 191, whether or not HB 151 passed? Mr. Cadby said you could build a full facility for a very small cost difference, and he didn't feel the limited approach would be made. He said the initial cost of construction and manning were too close to the same amount, to merit the restricted service facility.

Senator Weeding asked what the difference would be between a suburb and 3000 feet? Mr. Cadby said a branch could be put in a barren city, and a detached teller facility up to 3000 feet beyond the city limits, with HB 151. He said HB 191 would not allow you to put in an extended teller facility, if you were within ten miles of any other bank or savings and loan.

Closing by Sponsor: Representative Stang said he didn't really care about the branching portion of HB 151, because the system banks were already doing that now, under a different operational method. He said his opposition to HB 191 was that the control of banks would get further away from the people. He stated that book work took longer, through a system bank, than through a local independent bank. He said he felt HB 191 better addressed the needs of the consumers.

DISPOSITION OF HOUSE BILL 191

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF SENATE BILL 453

Chairman Thayer said several people had suggested SB 453 should be put in a subcommittee. He said he would like a straw vote of the committee's feelings for a subcommittee being setup. He asked if they would be willing to serve on a subcommittee?

Senator Meyer said he thought SB 453 had to have a suspension of the rules, to get the House to accept it. He said he thought the committee was wasting their time.

Amendments and Votes: None

Recommendation and Vote: Senator Williams made a motion SB 453 Do Not Pass. Senator Meyer seconded the motion.

Discussion: Senator Noble said there were a lot of good parts to the bill, and asked if they could delay action until they could recheck all of their notes?

Chairman Thayer said that would take withdrawal of the motion, by the moving Senator.

Senator Williams said he really didn't care to withdraw.

Senator Weeding asked what the deadline was, for returning the bill the to the House?

Chairman Thayer said the leadership had instructed committee chairmen that any amended bills needed to be cleared out of committee by March 16. He said those were House Bills, so this Senate Bill presented even further restrictions, because a Senate Bill had to get over to the House, and back to the Senate in that time.

Senator Boylan called for the question. The motion carried Unanimously.

ADJOURNMENT

Adjournment At: 12:12 p.m.

SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/6/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 453 (first reading copy -- white), respectfully report that SB 453 do not pass.

DO NOT PASS

Signed: [signature]
Gene Thayer, Chairman

scrsb453.306

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 3/6/89
BILL NO. HB 151

INDEPENDENT BANKERS AND OTHERS

TESTIFYING FOR HB-151

BANK RESTRUCTURE ACT
MONTANA BANKERS ASSOCIATION

Senate Business & Industry Committee — 10 a.m. Mar. 6, 1989

Rep. Bernie Swift, Hamilton
John Cadby, EVP, Montana Bankers Association, Helena
Mark Safty, Attorney, Billings, and drafter of the bill
Gary Carlson, CPA, Anderson-ZurMuehlen & Co., Helena
Lynn Grobel, President of MBA and First National Bank, Glasgow
Jim Bennett, Imm. Past President of MBA and President, First Citizens Bank, Billings
John Witte, President, Traders State Bank, Poplar
John D. Lawrence, President, Farmers State Bank, Worden
Sam Noel, President, Citizens State Bank, Hamilton
Sam Dasios, Businessman, Troy, MT
Earl Lovick, Director, First National Bank, Libby
Marty Olsson, VP, Ronan State Bank
Bob Sizemore, President, Western Bank of Chinook
Rod Smith, President, U.S. National Bank, Red Lodge
Larry Moore, Cashier, Stockmens Bank, Cascade
Bill Thorndal, President, First Security Bank of Laurel
Carl Bear, President, InterWest Bank of Montana, Bozeman
George Bennett, MBA Counsel, Helena
Mike Grove, President, First National Bank, White Sul. Springs

TESTIFYING AGAINST HB-191

Mark Safty, Attorney, Billings
Lynn Grobel, President of MBA and First National Bank, Glasgow
Jim Bennett, Imm. Past President of MBA and President, First Citizens Bank, Billings
John Witte, President, Traders State Bank, Poplar
John D. Lawrence, President, Farmers State Bank, Worden
Sam Noel, President, Citizens State Bank, Hamilton
Sam Dasios, Businessman, Troy, MT
Earl Lovick, Director, First National Bank, Libby
Marty Olsson, VP, Ronan State Bank
Bob Sizemore, President, Western Bank of Chinook
Rod Smith, President, U.S. National Bank, Red Lodge
Larry Moore, Cashier, Stockmens Bank, Cascade
Bill Thorndal, President, First Security Bank of Laurel
Carl Bear, President, InterWest Bank of Montana, Bozeman
Mike Grove, President, First National Bank, White Sul. Springs

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/6/89
BILL NO. HB 151

HB-151

MONTANA BANKERS ASSOCIATION
BANK RESTRUCTURE ACT

(As Amended and Passed House of Representatives)

The Bill allows:

1. All multi-banks (2 or more) to merge and consolidate. (Must be done simultaneously - all or none.)

2. In-state banks to branch in any town without a bank (Restricted to banks' county and adjoining counties).

3. In-state banks to buy a failed bank and make it a branch.

4. All banks to have one detached drive-up as far as 3000 feet beyond city limits.

5. All banks to place an Automated Teller (cash) Machine (ATM) anywhere in county and adjoining counties.

6. All branches must have local Community Advisory Boards.

Does not allow:

1. Interstate banking (an out of state bank cannot buy a bank(s) in Montana).

2. Branches in any town which has a bank (statewide denovo branching).

3. Out-of-state banks to acquire failed banks.

4 Out-of-State banks to branch in barren small towns.

Taxes:

Of the 6-3/4% state corporation income tax on banks, 80% would be distributed to counties with branches the same as has been done for the 35 savings and loan branches and the 1 bank branch for the past 10 years. Credit unions do not pay any state income tax.

Majority:

Approved by secret ballot 97 to 59, (1 abstaining bank) or a 62% majority of MBA members and a majority of all banks in Montana last October. Now supported by overwhelming majority of all banks.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3/6/89
BILL NO. HB151
Cadby

MONTANA BANKERS ASSOCIATION'S

RESPONSE TO MIB'S PROPOSED AMENDMENTS

TO HB-151

1. 1-1/2 years ago, MBA tried to have legal counsel compromise with MIB. They walked out of the negotiations.

2. 8 months ago, MBA's task force met with various MIB leaders. They refused to compromise.

3. 6 months ago MBA drafted a compromise bill. It was revised by members and finally approved by majority of banks.

4. One month ago HB-151 was further amended in House to address MIB's objections.

5. What's left, MIB wants to delay (mergers) or gut (branches).

6. In past month MIB has threatened MBA with loss of members, and an anti-trust lawsuit. Now they threaten to take this issue to the voters. MBA has not lost any members and will go to court or the voters if necessary. MBA will stand firm because that is the wish of the majority!

7. MIB has falsely accused MBA of representing only the big banks, decreasing tax revenue for local government and local control and purposely amending bill to allow de novo branching. HB-151 stifles growth of out-of-state banks, increases tax revenues, helps small banks become larger and stronger and guarantees community involvement. The typo error was caused by the Legislative Council.

8. <u>How can MIB "vehemently oppose" mergers and at the same time accept 6 year phase in</u>?

9. HB-151 was amended to require simultaneous mergers of banks under common ownership to prevent one or two banks from using up tax deductions (NOL Carry forward), and thereby raise tax revenue for local government. <u>MIB now suggests allowing multiple corporations which would prevent simultaneous mergers, reduce tax revenues and subject HB-151 to opposition by the counties and cities</u>.

10. Apparently MIB's proposed amendments are to either:

    a. Break up compromise by singling out mergers and amending out full service branches so as to <u>kill HB-151 in house</u>; or
    b. Pass both 151 & 191 but try to cap off and <u>prevent mergers of major bank systems in 1991, 1993, or 1995 legislatures</u>.

CONCLUSION:

a. MIB refused to negotiate with MBA in the past, why now?
b. Only a vocal minority of bankers are opposed to HB-151 today.
c. 60% of the House supported HB-151 and we believe at least 2/3 of the Senate will support HB-151.
d. Pass HB-151 and end the civil war.

Ex. #3
3/6/89

HB 151 and HB 191: two bills in conflict:

They amend three code sections, one dealing with branch banks and two dealing with automated teller machines, in conflicting ways.

As to the other sections, the proponents of 191 (the Independent Banks) vehemently oppose the merger and consolidation provisions in 151, and the 151 proponents (the Bankers Association) doesn't care for the provisions in 191 controlling state savings and loan branching.

Can the Senate act in such a way as to take the most worthwhile provisions of each bill while removing the conflicting parts, and send two compatible bills to the Governor? Yes. In so doing, could the Senate put an end to the seemingly endless Bank Wars? Very possibly.

What if . . . the merger and consolidation authority in 151 were phased in over several years, with only small mergers allowed at first and gradually larger mergers allowed each year? The independent banks could accept a phase-in of six years. The minority of independents who support the MBA bill (151) would be allowed to merge early in this period because of their relatively small size. Some of the chain banks would be in no hurry to merge under 151 because they are still using up tax deductions for net operating losses incurred in past years.

Without such a compromise, the Independent Bankers Assn. will petition 151 to referendum. This creates two possibilities: either they get 55,000 signatures, enough to suspend 151 until the 1990 election, or they get 18,000 signatures, which would not suspend 151 but could repeal it at the 1990 election. Under the latter scenario, every bank considering a merger would hurry up and run it through in 1990, even if they gave up a lot of tax deductions.

What numbers are we talking about on a phased-in merger program? Percentages of the total bank resources in Montana, which is about $7.2 billion. A phase-in could go in steps like this:

1990 -- mergers allowed up to 1% of total resources ($ 72 million)
1991 -- mergers allowed up to 2% of total resources ($144 million)
1992/93 -- mergers allowed up to 3% of total resources ($206 million)
1994/95 -- mergers allowed up to 4% of total resources ($288 million)
1996 -- no limit

What would this do for the Minnesota Twins or the other multi-bank holding companies such as the Montana Banc system or the Bank of Montana system? It would allow them to merge their banks in stages, putting a dozen banks first into four or five corporations, then two or three, and eventually into one.

Will this be negotiated by the two associations before the committee hearing? No. Feelings are running too high for the parties to sit down and negotiate anything right now.

ex. #3
3/6/89

Where would this compromise come from, then? From the senators who find themselves in the middle of the road on this issue. The Business & Industry Committee reflects the full Senate, with about one-third of the senators aligned with each camp and one-third undecided or able to see merit to each side's arguments. If that middle third pushes this compromise, the two committed camps will follow them.

How do the middle-ground senators reassure themselves that this compromise makes sense? Phone home, as E.T. put it. Ask the local banker who wants merger if he could live with the phased-in program, particularly when the alternative is fighting a referendum.

What's the rest of the compromise? How do the conflicts come out of the two bills? Basically by amending 151 down to the one section authorizing merger and consolidation, deleting the rest of 151 and sending 191 through as is.

ex. #3
3/6/89

Comparison -- two banking bills as amended

Subject	151 (MBA)	191 (MIB)
Merger & Consolidation	Allows any 2 or more banks under common ownership to merge into a single corporation if done all at once after Jan. 1, 1990. One bank would be main office, others would become branches.	No provision.
Opening new branches or extensions	Allows any state bank owned by in-state holding company (Twins excluded) to get charter from Banking Board to open a full-service branch in an unserved community, whether incorporated or not.	Allows any bank with at least two directors living in the county (Twins, too) to get a permit from Commerce Dept. to build an extended teller facility in an unserved community, whether incorporated or not.
	*only one branch charter per unserved community	*unserved community can have more than one extended teller facility
	*unincorporated community is any collection of buildings that looks like a place	*unincorporated community is a census enumerator district
	*can branch to furthest extent of any adjoining county	*can open teller facility anywhere in home county, within 25-mile radius in adjoining counties
	*unserved community could adjoin an adequately served community	*unserved community must be 10 miles or more away from served community
	*all services offered in main bank must be offered in branch	*teller facility offers such services as bank can justify and Commerce Dept. by rule allows.
Relocating existing drive-ups	Moves limits from 1,000 ft. to 3,000 ft. in any community for drive-up extensions.	Moves limits to 3,000 ft. in cities over 20,000.
State thrifts' powers	No provision.	Amends law governing state thrifts to allow as much branching as state banks.
Automated teller machines	Allows financial institutions to place ATMs anywhere in home county or any adjoining county.	Allows financial institutions to place ATMs anywhere in home county or within 25-mile radius in adjoining counties.
	*eliminates minimum spacing requirement between one bank and the ATM of another	*extends minimum spacing requirement to thrifts

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3/6/89
BILL NO. HB 151
Safty

HOLLAND & HART
ATTORNEYS AT LAW

MEMORANDUM

TO: Montana Bankers Association

FROM: HOLLAND & HART
Mark D. Safty
David R. Chisholm

DATE: March 2, 1989

RE: Limitation on branching by banks owned by out-of-state holding companies

---

You have requested a discussion of HB151, Section 5(4) (M.C.A. §32-1-372(4)) in relation to certain federal laws. As you know, HB151, Section 5(4) allows a bank to establish, maintain and operate a branch bank in certain circumstances. However, it prohibits a bank owned by an out-of-state holding company from establishing such branch banks.

Two federal statutes relate to HB151, Section 5(4). The Douglas Amendment (12 U.S.C. §1842(d)) prohibits an out-of-state holding company from acquiring an interest in a bank in Montana unless allowed by Montana law. The Douglas Amendment generally restricts interstate banking.

The McFadden Act (12 U.S.C. §36) provides that a national bank may have branch banks to the extent that "state banks" are allowed to have branch banks. As you know, national banks are created under federal law and subject to federal regulation while state banks are created under state law. The purpose of the McFadden Act is to provide competitive equality between national banks and state banks.

HB151, Section 5(4) falls between the Douglas Amendment and the McFadden Act. In falling between the two federal statutes, a question is created whether HB151, Section 5(4) violates one of the laws. In short, the argument raises the question whether the Douglas Amendment or the McFadden Act would control questions regarding the validity of HB151, Section 5(4).

Although that precise issue has not been addressed by the courts, one court would probably hold that the Douglas Amendment would prevail over the McFadden Act and support HB151, Section 5(4). In Independent Community Banker Assoc. of S.D., Inc.("ICBA") v. Board of Governors of the Federal Reserve System, 820 F.2d 428 (D.C. Cir. 1987) ICBA challenged a South Dakota statute that allowed out-of-state holding companies to

Ex. #4
3/6/89

acquire banks in South Dakota, but restricted them to a single office at a non-competitive location. The ICBA argued that the South Dakota statute prevented a national bank from branching and therefore was invalid because it conflicted with the McFadden Act. The court, in rejecting ICBA's argument stated:

> The McFadden Act permits national banks to branch in a state if and to the extent that the state law permits the establishment and operation of branches by state banks. South Dakota law imposes the same branching restrictions on state chartered banks acquired by out-of-state holding companies as it does on national banks similarly acquired. . . . Thus, the South Dakota statute maintains competitive equality between similarly situated state and national banks. The McFadden Act contemplates precisely this kind of equality. (emphasis supplied)

Although Independent Community Banker Assoc., Inc., is not direct controlling authority, it is persuasive that HB151's restriction on branching by a bank owned by an out-of-state holding company is a valid. That is, since HB151 restricts branching by both state and national banks owned by out-of-state holding companies on an equal basis it does not violate the McFadden Act under the holding in Independent Community Banker Assoc. Inc.

It should be noted that the identical South Dakota statute was held unconstitutional in a subsequent decision by another court. In Independent Community Bankers Assoc., Inc. v. Board of Governors of the Federal Reserve System, 838 F.2d 969 (8th Cir. 1988) the Eighth Circuit agreed in many respects with the District of Columbia Circuit decision discussed above. However, the Eighth Circuit did not agree that the statute fell within the state's powers. In declaring the statute unconstitutional, the court held that the South Dakota statute violated the Commerce Clause of the Federal Constitituion because it discriminated based on geographical ownership. The Eighth Circuit did not discuss the McFadden Act.

The conflicting decisions have not been reconciled. Without additional authority or congressional action it is difficult, if not impossible, to predict the strength or validity of the arguments presented in the two South Dakota cases. However, currently no direct controlling authority indicates that HB151, Section 5(4) violates federal law and at least one federal circuit court decision supports its validity.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3/6/89
BILL NO. HB 151
Carlson

Junkermier · Clark
Campanella · Stevens · P.C.
Certified Public Accountants

Ward F. Junkermier, CPA
George L. Campanella, CPA
Stone E. Paulson, Jr., CPA
Rick A. Frost, CPA
Robert E. Nebel, CPA
Joseph F. Shevlin, CPA
Ronald A. Taylor, CPA
Kent A. Borglum, CPA
Terry L. Alborn, CPA
William J. Eidel, CPA
Walter J. Kero, CPA

January 30, 1989

Linda Stoll - Anderson
Legislative Chair
Montana Association of Counties
1802 11th Ave.
Helena, MT 59601

Dear Linda:

Your association has asked us to evaluate the arguments presented for and against HB 151 and to render an opinion as to the fiscal impact to Montana Counties of that bill. In light of your budget restraints, the analysis was to be brief.

We have reviewed the following documents:

- MIB Report on Senate Bill 198, dtd 3/11/87
- AZ response to above dtd 1/16/89
- MIB letter to House Committee dtd 1/13/89
- AZ response to above dtd 1/17/89
- MIB report on Tax Implications of Bank Merger dtd 1/25/89 (Including Richard Tamblyn's letter dtd 1/24/89)
- State of Montana Fiscal note to HB 151
- George Bennett's ltr dtd 12/28/88
- MBA 20 questions/answers HB 151
- Testimony and analysis on HB 191
- Statement of Intent - HB 191, Roger Tippy
- MBA testimony to House Business Committee
- HB 151

We have not communicated with Gary Carlson or Richard Tamblyn directly. We do understand that Carlson is preparing a response to MIB's 1/25/89 report.

(A)

The fiscal impact to the counties as a whole of HB 151 cannot be determined. The impact is entirely dependent on the profitability of the banks and the extent of tax planning done within the rules and regulations by the banks. If the banks are profitable,

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Ex. #5
3/6/89

the counties as a whole will realize revenue. If there is no overall profit, the counties will see no revenue.

There are numbers in MIB's 1/25/89 report which are intended to estimate the loss of taxes under the proposed bill. Our review indicates that those numbers were obtained by comparing a computed tax (6 3/4% times book income) with a percentage of "applicable taxes" and an estimate of State Taxes. We feel this is not a valid conclusion for the following reasons:

- Sheshunoff reports net income which is a book income figure, not a taxable income figure.

- The report does not indicate any assumptions regarding the estimate for State Taxes.

(B)

Banks employ CPA's to assist with tax planning. HB 151 in its present form allows considerable latitude for tax planning in the area of the merger/consolidation section. In its present form, in the short term, there might be an overall decrease in revenue to the State and counties. Selective merger/consolidation would allow extensive tax planning by merging limited loss with profitable branches. The extent of this lost revenue cannot be predicted due to reasons already stated. The limitation of net operating loss carryforwards with a merger would affect this situation.

Opponents of this bill might well try to change the merger/consolidation language to be an "all or none" type situation.

(C)

The elimination of loss carryforwards with a merger is a key assumption to the revenue impact of this bill. If this interpretation were to change, the major tax drawback of a merger/consolidation would be removed. HB 151 would then most assuredly result in decreased revenue to the State and counties due to large net operating losses which would be available for carryover and could then be used to offset present profitable branches. Under present interpretation however, this is not possible in a merger/consolidation situation.

(D)

If HB 151 were to pass in its present form, if banks would choose to merge, and if the banks' profitability were to remain the same, then some counties which

Ex. #5
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presently have profitable banks might well lose revenues because of the allocation of the tax on the deposit ratio method. At the same time, other counties would probably gain revenues. (A lot of if's and maybe's!)

In conclusion:

- It is simply not possible to forecast the fiscal impact of HB 151.
- Merger/consolidation variables leave a lot of room for tax planning.
- Present DOR interpretation on NOL's and mergers is important.

If you desire further explanation or interpretation of this opinion, please do not hesitate to call.

Very truly yours,

JUNKERMIER, CLARK, CAMPANELLA, STEVENS P.C.
Certified Public Accountants

Joseph F. Shevlin

Joseph F. Shevlin, CPA
JFS/rml

Ex. #5 3/6/89

ANDERSON ZURMUEHLEN & CO., P.C.
Certified Public Accountants
Power Block Building • Second Floor
6th & Last Chance Gulch • P.O. Box 1147, Helena, MT 59624 • (406) 442-3540

MEMORANDUM

To: Montana Bankers Association

From: Gary B. Carlson

Date: February 22, 1989

Subject: An Analysis of February 9, 1989, Letter from the Office of the Legislative Auditor to Representative William Glaser

You asked me to respond to the above-referenced letter prepared by Ms. Lorry Parriman, Audit Manager of the Office of the Legislative Auditor (OLA). Ms. Parriman's letter seeks to describe the tax implications of House Bill 151 (HB 151). After reviewing applicable laws, it is my judgment that the OLA analysis is fundamentally flawed. OLA significantly misinterprets certain key statutory provisions which govern the filing of Montana corporation license tax returns. Also, because of the faulty analysis and erroneous interpretations, OLA's letter to Representative Glaser prompts me to suggest that MBA should seek to correct the record in this matter. In the following paragraphs, I present the correct interpretations of law, which I believe will be supported by the Montana Department of Revenue with respect to the procedures followed in filing corporate income tax returns.

Consolidated Tax Returns

The OLA letter is based on a misconception of the operation and applicability of Section 15-31-141(6)(a) and (b), MCA, which prohibits financial institutions from filing consolidated returns. This prohibition applies to affiliated corporations, such as we have with affiliated banks prior to the enactment of HB 151. It does not, however, govern merged corporations which operate as a single corporation.

Two or more non-bank corporations which are affiliated may file a single consolidated corporate license tax return, covering both corporations, provided certain conditions are met. However, the statute specifically prohibits two or more bank corporations (and/or a non-financial affiliated corporation) from filing consolidated returns.

Despite OLA's analysis of Section 15-31-141, MCA, none of the statutory provisions apply to banks which would merge pursuant to HB 151. The new merger law created by HB 151 would allow the creation of a single bank corporation, to include a main bank and one or more branch banks. The resulting tax (and operating) entity would be a single corporation--not a group of two or more corporations filing a consolidated tax return. In other words, financial institutions merged pursuant to HB 151 will result in a single corporation filing a single corporate return, not multiple corporations filing a consolidated return.

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While not applicable to banks merged pursuant to HB 151, Section 15-31-141(6), MCA, does (and continues to) apply to financial institutions and/or related holding companies. Neither corporations controlling banks (such as a one bank holding company or multi bank holding companies) nor separate corporations operating banks are allowed to file consolidated returns, nor would they be if HB 151 becomes the controlling law. Two or more separate bank corporations are not allowed to file consolidated tax returns. This is the operation of the current statute, and would remain so if HB 151 becomes law.

Tax Returns for Main Bank and Branches

OLA expresses the "belief" based on current law that even if two or more banks consolidated or merged into single bank, the pre-existing banks should file separate tax returns and thereby report separate net income for each of the operating locations. This interpretation of existing law is fundamentally incorrect. According to Montana law, the tax (and operating) entity created by a merger is a single corporation. A.R.M. 42.23.311 provides the filing requirements upon merger or consolidation. HB 151 tracks the existing corporate law of Montana, whereby a single bank corporation will be allowed to operate at more than one banking location (i.e., a main bank and branch banks). This corporate structure is not allowed for commercial banks under current statutes. If HB 151 were enacted, and banks did merge pursuant to the new statute, the resulting tax (and operating) entity that survives, as the main banking house, must file a single corporate tax return covering all of the banking locations, including the main bank, the branch bank, any detached facilities, satellite terminals, and the like. The resulting merged corporation will have no other option, nor should it, based on the experience of the Montana savings and loan industry.

Like banks, Montana savings and loan associations are financial institutions. When S & L's merge, which they can do under existing law, the surviving financial entity files a single corporate tax return. Those S & L corporations which do operate branches (and currently 11 S & L corporations in Montana do operate 35 branches), have been filing single corporate tax returns since 1979, when they became subject to the corporation license tax. Each of the operating S & L corporate entities have filed single tax returns for the past ten years, just as banks will do if they merge following enactment of HB 151.

Significantly, there is a parallel with S & L's among Montana's banks, although it is a historical artifact. The Norwest Bank of Anaconda-Butte is a merged bank which files a single corporate tax return for both of its banking locations in two different counties. These two banking locations are operated as a single bank corporation, because the Norwest Anaconda-Butte bank merger occurred prior to the enactment, twenty years ago, of a prohibition against bank branching through merger.

The OLA analysis fails to recognize the applicability of the Rules of the Montana Department of Revenue governing the distribution of taxes paid by merged financial institutions. A.R.M. 42.24.212 provides that corporation license taxes paid by merged financial institutions in Montana, such as Norwest Bank of Anaconda-Butte, are allocated among counties based on each bank's respective deposits at the end of each calendar year.

The OLA analysis also fails to recognize the extent to which Montana's existing tax and corporate law governs the filing of tax returns for--and taxes paid by--merged corporations or financial institutions. Because these laws currently exist, HB 151 does not contain any provisions which change, alter, or add to any of the statutes covering filing, paying, or calculating corporation license tax returns. Indeed, HB 151 contains no tax provisions, whatsoever.

Near the end of Ms. Parriman's letter, OLA poses the following question: "Could the branch bank be considered a bank that must file a return and pay taxes and fees separately?" OLA responds to this query by suggesting that the answer is not addressed in HB 151 and implies that an amendment would be an appropriate step to take to address the alleged problem. Once again, the OLA analysis fails to refer to the applicable Montana law governing corporate merger and taxation thereof. Had OLA staff made such a reference, I believe that they would have concluded that the current reporting practices, based on existing law and accepted by the Montana Department of Revenue, require that a single tax return be filed for a tax (and operating) entity surviving a corporate merger.

One final point about the OLA analysis. When two or more corporations merge, they become one corporation. All income and expenses for this corporation are reported in a single tax return. Transfers of income and expenses from one banking location to another does not occur because all income and all expenses of banking locations of a merged entity are filed together as a single corporation. Thus, there is no potential for cost shifting between banking locations to reduce tax burdens within a merged entity operating branches, as suggested by OLA.

Conclusion

The conclusions and recommendations made by OLA are erroneous and should not be relied upon. The statements made by OLA are frequently inaccurate and, in nearly every circumstance, misconstrue the manner in which corporate license tax returns would be filed following merger. In short, the OLA representations misinterpret both existing statutes and proposed statutes.

HB 151 suffers from no defects in the area of taxes. Put another way, HB 151, appropriately, conforms the taxation of mergered banks (and branches) to the taxation of other merged corporations in Montana.

Finally, in response to your inquiry as to the necessity of adding amendments to HB 151, I have concluded that none is needed in the tax area.

Ex. #5
3/6/89

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

LEGISLATIVE AUDITOR:
SCOTT A. SEACAT

LEGAL COUNSEL:
JOHN W. NORTHEY

DEPUTY LEGISLATIVE AUDITORS:
MARY BRYSON
Operations and EDP Audit
JAMES GILLETT
Financial-Compliance Audit
JIM PELLEGRINI
Performance Audit

February 9, 1989

Representative William Glaser
House of Representatives
Capitol Station
Helena, MT 59620

Dear Representative Glaser:

At your request we reviewed House Bill 151 relative to any tax implications. The following information outlines some items to consider in this area.

Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax. Section 15-31-101, MCA, requires corporations to pay annually a license fee (tax) equal to a percentage of its total net income for the preceding taxable year, or $50, whichever is greater. Currently the percentage is 6 3/4% of net income. Section 15-31-113, MCA, defines net income as the gross income of the corporation less deductions set forth in section 15-31-114, MCA. This section states that in the case of a merger or consolidation of corporations, the surviving or new corporate entity shall not be allowed a deduction for net operating losses sustained by the merged or consolidated corporation prior to the date of consolidation.

Section 15-31-701, MCA, allows for the collection of the corporation license tax from banks or savings and loan associations. This tax is distributed as follows:

1) 80% to the various taxing jurisdictions within the county in which the bank or savings and loan association is located,

2) 12.8% to the state General Fund,

3) 5% for state equalization aid to the public schools, and;

4) 2.2% for long-range building program bonds.

The 80% is allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located. If a tax return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the Department of Revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions.

Ex. #5
3/6/89

HB 151 section 4, part 4, allows a branch bank upon consolidation or merger. Section 15-31-141(6), MCA, states:

> "(a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.
>
> (b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section."

The issue of filing returns for consolidated corporations is not addressed in HB 151. Based on current law, even if two or more banks consolidated or merged into one bank, we believe separate returns reporting net income would need to be filed.

Another item to consider is the definition within the laws relating to banks. Would a branch bank be considered part of the main banking house and therefore, taxes and fees would only be assessed on the main banking house or could the branch bank be considered a bank that must file a return and pay taxes and fees separately? The answer to this question is not clear and may need to be addressed in HB 151.

In summary, by allowing branch banks, the tax distribution to the local taxing jurisdictions may shift. This would depend on where branch banks are established, the location of the main banking house, and net income prior to and after any mergers or consolidations. There is also a potential for cost shifting between the banks to reduce tax burdens. For example, one bank with significant losses could transfer loans, acquisition costs, and/or allocated expenses to other banks to reduce their profits, and thus reduce the consolidated bank's total tax liability. This could occur now if several banks are under one corporation.

If you have any questions on this information or if we can be of further assistance please call.

Sincerely,

Lorry Parriman
Audit Manager

SENATE BUSINESS & INDUSTRY COMMITTEE
HELANA, MT

MARCH ...9

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 3/6/89
BILL NO. HB151

Grobel

MR CHAIRMAN & MEMBERS OF THE COMMITTEE:

MY NAME IS LYNN GROBEL. I AM THE 1988-89 PRESIDENT OF THE MONTANA BANKERS ASSOCIATION.

I AM ALSO PRESIDENT AND PART OWNER OF THE FIRST NATIONAL BANK OF GLASGOW AND DIRECTOR AND PART OWNER OF THE FIRST NATIONAL BANK OF HINSDALE. I AM AN INDEPENDENT BANKER AND HAVE BEEN FOR THIRTY YEARS.

I AM HERE THIS MORNING TO SPEAK IN FAVOR OF HOUSE BILL 151. A BANK RESTRUCTURE ACT. THROUGH MAILINGS TO YOU WE HAVE OUTLINED THAT THE BILL RECEIVED COMPLETE ACCEPTANCE BY 62% OF THE 157 MEMBERS OF THE MONTANA BANKERS ASSOCIATION. FOR MANY SESSIONS OF THE LEGISLATURE THE MBA HAS NOT TAKEN A POSITION ON THIS SUBJECT: HOWEVER, LAST FALL THE MBA BOARD VOTED TO PRESENT THIS BILL TO THE LEGISLATURE AND TAKE THIS POSITION BECAUSE THEY FELT THERE IS A NEED TO MODERNIZE THE BANKING STRUCTURE IN MONTANA.

I WILL ATTEMPT TO EMPHASIS TWO PRINCIPAL POINTS THIS MORNING - ONE - THE FACT THAT THE HEART OF THIS BILL IS THE MERGER/CONSOLIDATION SECTION AND BRANCHING. SECOND - THE OVERWHELMING SUPPORT THIS BILL HAS RECEIVED BY BANKERS IN MONTANA.

MERGER/CONSOLIDATION WILL ALLOW MANY SMALL BANKS TO MERGE, BECOME A FULL SERVICE BRANCH AND OPERATE MUCH MORE EFFICIENTLY AND AS A RESULT PASS SOME OF THE SAVINGS TO THE CONSUMER THROUGH THE ECONOMIES REALIZED. THIS BILL WILL ALLOW MORE FULL SERVICE BANKING OFFICES IN MONTANA AND MORE COMPETITION IN BANKING. SOUTH DAKOTA WHICH IS ABOUT OUR SIZE IN POPULATION IS A BRANCH BANKING STATE AND THEY HAVE ALMOST TWICE AS MANY BANKING OFFICES AS WE HAVE IN MONTANA.

A LIST I HAVE HERE IS OF 15 COMMUNITIES THAT PRESENTLY DO NOT HAVE A BANK BUT COULD BE SERVED BY A FULL SERVICE BRANCH BANK WITHIN ~~SEVERAL YEARS~~ a short time AFTER THE PASSAGE OF HOUSE BILL 151.

Ex. #6 3/6/89

THIS OTHER LIST I AM HOLDING IS A LIST OF 5 BANKS IN MONTANA WHICH COULD BECAUSE OF THEIR HIGH COST OF OPERATION BE LIQUIDATED IN SEVERAL YEARS WITHOUT THE PASSAGE OF HOUSE BILL 151.

IN SOME INSTANCES, SMALL BANKS IN MONTANA NEED TO HAVE THE OPPORTUNITY TO MERGE AND BECOME FULL SERVICE BRANCHES IF THEY ARE TO SURVIVE IN THIS BANKING ENVIRONMENT. IT IS EVIDENT TO ME AND I HOPE TO YOU THIS BILL WOULD BE GOOD FOR THE CONSUMER, GOOD FOR THE ECONOMY OF MONTANA AND GOOD AND MUCH NEEDED BY THE BANKING COMMUNITY.

THERE HAS BEEN SOME DISCUSSION OF EMPLOYMENT IN BRANCH BANKS VERSUS UNIT BANKS. IT IS MY BELIEF THAT A BRANCH BANK WILL EMPLOY AS MANY PEOPLE AS NECESSARY TO SATISFY THE NEEDS OF THE CONSUMER. IF THERE IS A STRONG LOAN DEMAND IN A CERTAIN BRANCH BANK THAT BRANCH SHOULD BE STAFFED BY ENOUGH LOAN OFFICERS TO TAKE CARE OF THAT LOAN DEMAND.

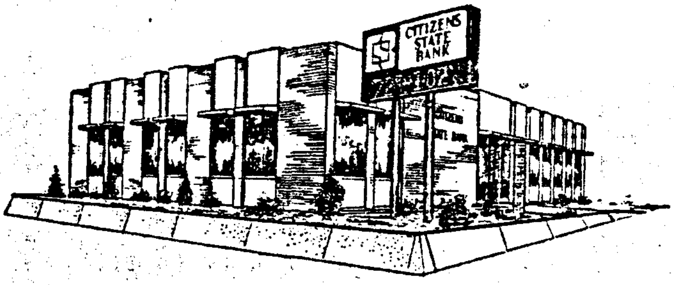
A BANK IN SOMEWAYS IS LIKE A GROCERY STORE, RESTAURANT, HOSPITAL OR ANY OF A NUMBER OF OTHER KINDS OF BUSINESSES. IN OTHER WORDS, A BRANCH BANK PROPERLY RUN WILL HIRE AND STAFF AS MANY QUALIFIED PEOPLE THAT CUSTOMER NEEDS DICTATE.

I MENTIONED OVERWHELMING SUPPORT BY THE BANKERS OF MONTANA. I AM TOLD THAT IN THIS POINT IN TIME MORE THAN 125 OF THE 168 BANKS IN MONTANA ARE IN FAVOR OF THIS LEGISLATION. 75 OF THE 100 SMALLEST BANKS IN MONTANA ARE NOT OPPOSED TO THIS LEGISLATION WHICH DISCOUNTS THE THEORY OF SOME THAT THIS ~~SMALL~~ Bill IS FAVORING OR FOR THE BENEFIT OF THE LARGER BANKS OF THE STATE.

THIS BILL IS COMPROMISE LEGISLATION. THE MBA IS NOT INTERESTED IN FURTHER COMPROMISE WITH THE MIBA WHICH IS ONLY INTENDED TO SLOW DOWN OR HALT THE PROCESS AND ONCE AGAIN PUT OFF THE NEEDED MODERNIZATION OR OUR BANKING SYSTEM.

AS MENTIONED BEFORE I BELIEVE THIS IS GOOD, PROGRESSIVE AND TIMELY LEGISLATION AND I URGE ALL COMMITTEE MEMBERS TO VOTE IN FAVOR OF HOUSE BILL 151.

THANK YOU.



SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 3/6/87
BILL NO. HB 151

Citizens STATE BANK FULL SERVICE

Since 1916 SCOBEY, MONTANA 59263

Witte

Mr. Chairman, members of the committee:

My name is John Witte, President of the Citizens State Bank of Scobey, Traders State Bank of Poplar, and N. E. Montana Bank Shares, a multi-bank holding Co. that owns those two banks.

I support H.B. 151. I may never use it, but a few years ago when we had been declared a disaster County in Daniels county for 8 consecutive years, and we lost two million dollars, if that drain on capital would have continued I would have wanted to merge so that we could have maintained a banking office in Scobey, rather than being gobbled up by a Credit union such as happened in Fromberg.

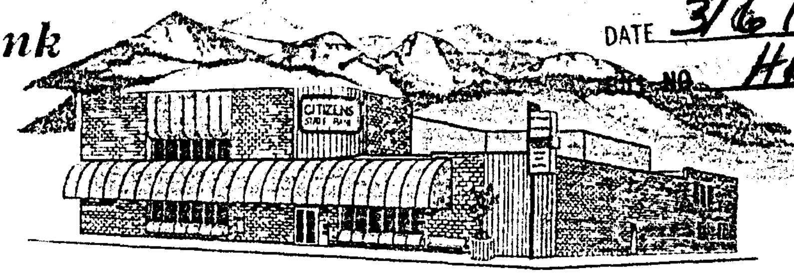
This year our two banks totalling a little over 50 million dollars in deposits will pay approximately $58,000.00 in State Income taxes. 80% of thatgoes back to support our counties and schools. If Fromberg could have been branched, paying taxes on the same basis as our two banks, they should have paid approximately $10,000.00 in State Income tax. What will you get out of it now? Nothing--because Credit Unions pay no State or Federal income tax. Yet they can go where they want to go, do what they want to do, and you have no control over them. They are the fastest growing financial industry in the Nation and their share of the market in Montana has grown 40% since 1984, while we are tied down by archaic and outdated regulations.

Long before the Farm Credit System, S&L's and Credit Unions, banks have always been the financial backbone of this Nation. 48 other States have recognized the uneven playing field the banks play on, and I think its about time we get into the main stream of life and become the 49th state to give the banks a little more freedom, and to help Montana move ahead. I would hope that HB 151 comes out of this committee with a unanimous DO PASS.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 3/6/89
BILL NO. HB 151
Noel

Citizens State Bank
DRAWER 393 CORNER MAIN & 1ST
HAMILTON, MONTANA 59840
PHONE: 406-363-3551

SAMUEL R. NOEL
PRESIDENT AND CHIEF EXECUTIVE OFFICER



March 3, 1989

To the Honorable Gene Thayer, Chairman
Committee Members
Senate Business & Industry Committee

Gentlemen:

The Citizens State Bank of Hamilton was founded in 1905. I am the President and a director. Its Chairman is Mr. Vernon C. Hollingsworth who has owned it since 1938, and was President until 1988, a span of 50 years. The bank has $56,000,000.00 in total assets, and derives its business entirely from Ravalli County. It is an independent community bank.

The bank was formerly a member of the Montana Independent Bankers Association. Mr. Hollingsworth elected to cancel the banks membership in 1987, because this group no longer represented the interests of Mr. Hollingsworth or the Bank. The Bank is a member of the Montana Bankers Association and strongly endorses HB 151.

We feel that banking structure is too restrictive in Montana. Current restrictions are designed to help protect the "exclusive" bank franchises owned by a very few short-sighted bankers. They seem to fear the banking structure changes that have occurred all over this nation and in the states surrounding Montana. You must ask your self, why? What are they afraid of? Why is merger and consolidation harmful? Will the Montana Bankers Association House Bill 151 benefit the consumer? Why do these Montana Independent Bankers wish to limit services to the consumer?

We at Citizens State Bank, and a majority the members of the Montana Bankers Association, feel that the members of your committee and the full Senate know the answers to these questions and will move to approve HB 151 and kill HB 191.

We applaud the management, directors and members of the Montana Bankers Association for finally taking a stand. It should be apparent, that a larger number of banks support this legislation (HB 151) than the group who oppose it and the number of independent banks supporting HB 191 is dwindling. Montana needs to progress into the competitive banking structure permitted by other states. Everyone will benefit--consumers, bank owners and the State of Montana. There is no honor in being the last State to change. Take off the shackles that currently inhibit banking growth and competition against savings and loans, credit unions and investment firms, all of whom may branch wherever they please.

Ex. # 8
3/6/89

March 3, 1989

Think of the consumers in "barren towns" such as Darby, Wisdom, Florence, Corvallis, Troy, Arlee, Pablo, Somers and Fromberg, to name a few. It is far less expensive to establish a full service branch than to separately charter a bank in these small communities and most would not be able to raise $1.5 to $2 million in capital for a new charter.

And finally---Please observe the number of small, independent banks who support this bill, here today. This is not a big bank bill---it is a community bank bill, which will benefit all banks—introduced by a member of the House from Ravalli County.

Thank you for your support. I would be willing to answer any questions you may have.

Sincerely,

Samuel R. Noel

Samuel R. Noel
President &
Chief Executive Officer

SRN:rmg

SENATE BUSINESS & INDUST
EXHIBIT NO. 9
DATE 3/6/89
BILL NO. HB 151

Montana Independent Bankers) Testimony Against
Roger Tippy, Lobbyist & Counsel) House Bill 151

The bill is very vague about what constitutes an unincorporated "city." It is an "aggregation of inhabitants and structures sufficient to constitute a distinct place," and its limits are "boundaries that under the circumstances define the city as a distinct place."

Looking around Great Falls, outside the city's limits, Black Eagle is no doubt a distinct place. What about the Lower Sun River area or the lower Fox Farm Road neighborhood? Around Billings, Lockwood is a distinct place -- is Blue Creek, Briarwood, or the unincorporated portion of Moon Valley? If we can name these areas and everyone knows where they are, what else do they need to be distinct places? Not a post office, not a census enumerator district, not a voting precinct or a school district.

The bill makes it as hard to justify opening a branch bank as it is to charter a new bank. In sec. 3, the bank wanting to branch must convince the state banking board by "a pervasive showing that there is a reasonable public necessity and demand for a . . . branch bank at the proposed location." Why it is that a type of banking facility which can be closed with no hearings or permission should be that hard to open is curious.

The bill is even more curious where it gets specific on where a new branch bank can be located. It has to be in an unserved city, which as already noted is vaguely defined as a collection of buildings, when unincorporated. Then this unserved "city" must be in the home county or an adjoining county in which the main banking house "of" the branch bank is located. This is a contradiction in that a main banking house, which the bill defined earlier, cannot be a branch bank.

Reading on, the committee should note that an unserved or "barren" community is described at page 10, line 14: one "in which no bank or branch bank is located at the time the branch bank is to be established." This creates a type of exclusive franchise grant to the bank which is able to get the first branch into an unserved "city" -- if Bank A gets the branch in Black Eagle or Lockwood or wherever, the other banks in town are frozen out in terms of putting branches there. These applications will unleash fiercely contested hearings before the State Banking Board and will enable many lawyers to put their children through college and law school.

The debate in the House committee indicated an understanding that the full service requirement on branches-by-merger (see page 7, line 17) also applies to new branches. This will impact the bottom line on whether branches in small remote communities can make a profit.

SENATE BUSI
EXHIBIT NO. 4
DATE 3/6
BILL NO. H

THE WALL STREET JOURNAL MONDAY, OCTOBER 5, 1987
MIDWEST EDITION

Country Blues

Deregulation Raises Prices, Cuts Services In Many Rural Areas

Phone Bill of Mrs. McGinnis Is Up 300% in Nebraska; A Sick Man Misses the Bus

Small-Town Banks Play Safe

By BILL RICHARDS
Staff Reporter of THE WALL STREET JOURNAL

SCOTTSBLUFF, Neb.—As Scottsbluff's mayor, Donald Overman, recalls that unpleasant morning several years back, snow was blowing out of a leaden sky when his eastbound Frontier Commuter Airlines flight set down at North Platte, Neb.

As soon as the door popped open, the crew hastily departed, leaving the plane sitting on the tarmac with Mr. Overman and 20 other bewildered passengers waiting to fly on across the state. The pilot returned to announce that the airline was jettisoning its unprofitable route across Nebraska. He gave the passengers a choice: Fly 200 miles in the opposite direction to Frontier's home base in Denver or stay dumped in North Platte.

Mr. Overman calls it "a pretty dramatic lesson in deregulation."

For big-city dwellers, deregulation has mostly been a boon. Wider freedom from federal rules has often led to cutthroat competition in everything from interest rates to intercity flights and telephone calls.

Different in the Panhandle

But in sparsely populated places like the Nebraska Panhandle, deregulation hurts. Although some 700 banks have branches in New York City and about 40 airlines fly in and out of Chicago, a rural area frequently has only a single supplier of such vital services.

So as regulatory control fades, prices are climbing in these areas—and service is dwindling. From banks to buses to telephones, deregulation is driving home a hard economic lesson: Big government may not fit with the rural self-image of rugged individualism, but no government is sometimes worse.

"Rural people place great value on the idea of self-sufficiency, but they operate in a framework that is anything but independent," says George W. Rucker, research director for Rural America, a Washington D.C. public-interest group. Mr. Rucker and others say that federal regulation has long amounted to a subsidy of low-price rural power, transportation, telephone and other services, acting as a form of social engineering to build and maintain rural populations. "In a sense," says Calvin Beale, a U.S. Agriculture Department population expert, "rural development was propped up by federal regulation."

Speeding Depopulation?

Deregulation is underscoring the extent of those hidden rural subsidies as it wipes them out. Mr. Beale and others worry that the process is also hastening the depopulation of some of the same communities that regulation once helped build.

"If the present deregulation trend continues," warns Sen. Larry Pressler, Republican of South Dakota, a longtime opponent of the trend, "small cities and towns could end up as remnants of the past."

Since the beginning of the 1980s, nearly half the nation's nonmetropolitan counties have lost population, reversing the widely publicized back-to-the-land trend of the previous decade. Agriculture's problems, farm consolidations and the aging of the rural population have all contributed. "But when you deregulate," says William S. Duncan, head of the Mountain Association for Community Economic Development in Berea, Ky., "you're making a social decision to become a nation of big cities."

On the high plains of western Nebraska's Panhandle, a region that is as large as all of lower New England but has a population of less than 100,000, deregulation's impact isn't like that of the dust storms and droughts that sent farmers stampeding in years past. Instead, it is more like erosion, making life a bit more expensive here and a bit less palatable there.

The Telephone

At her desk in Crawford, Neb.'s tiny city hall, Mary McGinnis, 65, holds forth about her telephone bill from Northwestern Bell Telephone Co. "Can you believe?" Crawford's white-haired water commissioner tells a handful of loungers. "The bill on that old el-cheapo dial telephone of mine, it went up nearly 300% since 1984"—from $7 a month to $27.

In the past, the Federal Communications Commission required telephone companies to charge urban and rural customers the same for service, in effect subsidizing rural service, which is far more expensive because there are far fewer customers to cover fixed costs. But since deregulation, phone companies are passing on more of the actual service cost to their customers, and rural phone bills are soaring.

By itself, a rising phone bill isn't likely to send anyone packing for the city. Still, Mrs. McGinnis says she sometimes finds herself thinking the unthinkable these days—contemplating a move to a bigger place, like Rapid City, S.D. "It would be nice," she says, "living close to where things are cheaper."

The Bus

William Shay is one of a contingent of disabled veterans around Scottsbluff who travel regularly to Veterans Administration hospitals for treatment. He suffers from edema. Twice a month, the 70-year-old former farm laborer leaves his rented room so that doctors can drain off the fluid that balloons his weight to 290 pounds.

Mr. Shay, who has had two heart attacks, used to take the bus to the veterans' hospital in Hot Springs, S.D., some 150 miles north of Scottsbluff. Then came deregulation and the bus route was eventually dropped. Now he waits for the local veterans' office to find him rides and doesn't always get to the hospital on schedule. "That bus," he says, "was the difference between life and death for me." Now his life depends on a more haphazard arrangement.

Since bus deregulation began in 1982, more than 3,000 small towns and cities have lost bus service, according to the Department of Transportation. Star Bus Lines, the Panhandle's last remaining local carrier, still has travel posters for Hawaii and Australia on the walls of its Scottsbluff terminal. But a bus traveler headed for one of those exotic destinations must first take Star's 6:30 a.m. bus 40 miles south to Kimball, Neb., then catch the westbound Greyhound for Cheyenne, then wait for the bus south to Denver. The 250-mile trip takes a day and a night. Few people bother.

Darlene Ruth, Star's manager, says the bus line is thinking about ending its scheduled runs and just offering charter service. Under deregulation, big carriers like Greyhound Lines Inc. juggle schedules and routes so fast, Mrs. Ruth says, that feeder operations like Star can't keep up. "You get the impression they don't care about us little people in between the big cities," she says.

Trucks

Richard Holliday, a blunt-spoken former trucker whose Gehring, Neb.-based Nebraska Transport Co. is the region's biggest truck line, says that since deregulation he has routinely slashed rates for customers on highly competitive interstate-highway routes. But customers in communities off the beaten path, where there is no truck competition, have to pay more than their urban counterparts. Mr. Holliday offers a gloomy prediction for some of the industry's customers: "The mom-and-pop store in some small, out-of-the-way town—they've had it."

In a corner booth at the 77 Lounge in Chadron, Neb., far from any interstate, owner Evva Gore whips out a freight bill to show a visitor just how fast her trucking costs are climbing. It costs $13.55 to have three cases of liquor hauled 400 miles across the state from Omaha, up from $12.78 last year.

"When I saw that, I said 'bullfeathers,'" says Mrs. Gore, a 27-year veteran of the bar business. The 77 Lounge is up for sale—not because of deregulation—and Mrs. Gore says she is looking forward to moving someplace warmer. Meanwhile, she confides that she has worked out a way to beat the price increase: "I drive my motor home to Omaha and tell them to fill up the bathtub with cases of booze."

Not everyone in Chadron's business community can improvise like Mrs. Gore. James Aspden, manager of Henkens Implement Co., wends his way between bins stuffed with spare farm-machinery parts and stops in front of a 16-foot sickle bar. Mr. Aspden says the device costs only $150, but he has to tack on $50 more to cover trucking charges. When a freak hailstorm caused $25 million of damage to the town last summer, Chadron residents discovered they could find replacements for their shattered storm windows for $20 less in towns with better truck service.

The Bank

When Robert McCulley turned up at the Holiday Restaurant in Kimball, Neb., one evening this past July, more than 50 people crowded into the back room to meet him. Mr. McCulley is no celebrity; he is a broker for E.F. Hutton & Co. And like a growing number of bankers, brokers and other money managers these days, he spends much time in small towns and cities around the Panhandle trying to persuade people to put their money elsewhere than the local bank.

Deregulation means more business for Mr. McCulley and his fellow circuit riders. But it is sapping life from small-town banks and from the communities that rely on them. Under deregulation, many rural banks are forced to pay higher interest to compete with outsiders for deposits. Deregulation has also cleared the way for big outside banks to steal away borrowers who once automatically would have gone to their local bank for cash.

In a report on changes in rural America last year, researchers at the Kansas City Federal Reserve Bank weighed the pros and cons of bank deregulation and concluded, "On balance, economic activity in many rural communities probably has been negatively affected by higher [loan] interest rates from deregulation."

Michael Nelson, president of Kimball's First State Bank, estimates that 25% of the money the town's 3,500 residents might have deposited in his bank in the past now goes to brokerage houses and other outsiders. Squeezed for profits, small-town banks are shying away from putting money into uncertain local business ventures. "These days," says Lewis Mehling, vice chairman of American National Bank in Sidney, Neb., "you're a little less inclined to stick your neck out to help some young person get started."

Mr. Mehling's bank recently turned down applicants seeking business loans to launch a restaurant and a retail store in Sidney. There isn't much likelihood the businesses will get help elsewhere. "E.F. Hutton," Kimball's Mr. Nelson points out dryly, "doesn't finance gas stations and clothing stores."

The Plane

At his insurance agency in Scottsbluff, Mayor Overman keeps a plastic model of a passenger jet behind his desk. It is a talisman of sorts, since Scottsbluff has managed to hold on to some air service since deregulation. But at a price. There are no Supersavers or fare wars. Since 1984, four airlines have come and gone, including the one that stranded Mr. Overman in North Platte. The 150-mile flight to Denver now costs $75, up from $49 three years ago.

(A 1982 federal study showed that following deregulation, the average cost of flying out of a small town had climbed by 16% while the cost of flying out of big cities had declined by 33%. A federal aviation expert says those percentages are "still in the ballpark today.")

Mr. Overman isn't complaining about the price. He has been to Washington twice recently pleading for federal help to keep Scottsbluff's air connection alive. The city is 400 miles from Lincoln and Omaha, Nebraska's state capital and its financial center. Without air service, the mayor says, "we might as well be in another country."

Other Panhandle communities are even more worried. Since deregulation, virtually all the region's air service depends on the federal government's Essential Air Service program, which provides subsidies to commuter lines servicing otherwise unprofitable rural areas. The program is scheduled to end next year.

Panhandle officials say that losing air service would be deregulation's cruelest blow. Without it, a distant traveler who wanted to get to Chadron would have to fly to Rapid City, the nearest city with scheduled air service, hire a car and drive 114 miles to reach Chadron. "It would have a drastic effect on our economic development effort," says Carl Dierks, Chadron's city manager.

Among other problems, Mr. Dierks points out, there would be no air link for nearly 2,000 students who attend Chadron State College, the community's economic anchor. Mr. Dierks is heading an effort to broaden Chadron's agriculture-based economy. But he says one of the first things prospective employers ask about is air service.

"Disaster might be too strong a word to describe the effect of losing our air service," Mr. Dierks says. "But it would certainly make Chadron a less desirable place to live."

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 3/6/87
BILL NO. HB 151

Just in case you missed it...

Branch Bullying: Big Texas Banks Drain Deposits From Small-Town Units, Cutting Off Locals' Credit

By LEONARD M. APCAR
And BUCK BROWN
Staff Reporters of THE WALL STREET JOURNAL

LUFKIN, Texas—When the big Dallas and Houston banks moved into Lufkin in the 1970s, they promised to transform this dusty sawmill town into an East Texas money center.

Suddenly, multimillion-dollar credit lines were available to local companies. Sophisticated trust services were dangled before rich lumber and oil families. Dollars flowed from automated teller machines. Drive-up banks engulfed two square blocks.

With little Lufkin finally enjoying the benefits of big-city banking, people celebrated. The grand opening of one bank's four-story building was something: hot-air balloons, prizes and an appearance by gold-medal gymnast Mary Lou Retton.

Promised Prosperity Lost

But today, the "new age" promised by the arrival in Lufkin of Dallas-based First RepublicBank Corp. and Houston-based First City Bancorp. of Texas has sunk into a dark age.

Some Lufkin banks—and hundreds of little ones like them that were absorbed by big Texas banking chains in recent years—now are caught in a mess not of their own making. As loan losses at money-center banks in Dallas and Houston mount, banks all across the state are under strict orders to shovel hard-earned dollars to their sickly, cash-starved holding companies. So the banks are systematically cutting local borrowers' loans and credit lines.

The upshot: Deposits generated in places such as Lufkin are being used to refinance shaky real-estate and energy loans in Dallas and Houston. And with the little banks left with little money to lend, local businesses are being squeezed—some right out of business. The big banks "are just choking the entire state," says F. Hagen McMahon Jr., executive director of the Independent Bankers Association of Texas.

What annoys everyone in Lufkin from a local Chamber of Commerce to the Baptist minister is that the little town had nothing to do with the energy and real-estate lending debacle in Houston and Dallas but is paying the price for it.

Shifting Funds

As recently as 1985, nearly 66% of the deposits at the little banks now owned by First RepublicBank were recycled back to the small towns as loans. Today, that total has shrunk to 41%, and $1 billion once in borrowers' hands has vanished. And more than half the funds that its local banks invest in loans and securities have gone to Dallas, up from only 14% five years ago.

The never-ending crisis in Texas banking is panicking investors, who have lost millions of dollars. It's rattling the nation's capital, where administration officials fear that federal bailouts of Texas banks and thrift institutions, a third of which are insolvent, could increase the national budget deficit by more than $10 billion.

But numbers of that magnitude mean little to the people in Lufkin (population 32,000) and similar Texas towns. What troubles them is that a Lufkin merchant who had banked without difficulty for 22 years now can't get a $12,000 loan to repair the leaky roof of his store. Or that a local physician is being ordered to repay a $10,000 note for no apparent reason. Or that one of their good friends is going out of business because the big-city bankers arbitrarily cut him off.

"Probably everybody that's in business in Lufkin has had their business whittled down or their borrowing power cut," says an auto dealer, whose own credit line was slashed 20%.

Already-Ailing Economies

Lufkin's economy, like that of many towns big and small in the Southwest, had already been hit hard by the depression in the energy industry. Business and personal bankruptcies in East Texas have soared twentyfold since 1986. Thousands of mill workers, carpenters and oil-field roughnecks have lost their jobs. And now, as businessmen in Lufkin and other little towns turn to First RepublicBank and First City, the money-center banks that once promised them all the financial support they would ever need, they're getting little help.

In Lufkin, chicken farmers Edgar and Gilbert Burton recently filed personal bankruptcy petitions because their bankers refused to carry them until egg sales pick up in the fall. In nearby Henderson, Roger Ellis wakes up in the middle of the night because his Dallas-owned bank, which once promised him an endless supply of credit, is demanding that he pay off his construction company's note even though he has never missed a payment. And in Temple, hundreds of miles west of here, a roofing company was ordered by its Dallas-controlled bank to either pony up a $100,000 deposit or risk losing a $200,000 credit line.

"The banks have gotten a little bit rough and a little bit mean," says James A. Jones, whose Piney Woods Tractor & Implements Inc. in Lufkin has lost sales because the banks refuse to finance some of his customers.

First RepublicBank, whose federal bailout is pending, and First City, whose federally aided $1.5 billion restructuring was completed last month, both acknowledge that they are relying heavily on their small-town banks for funds, but they insist they're still lending money in the big cities and small towns. The problem, they say, is a lack of profitable opportunities anywhere in the state, and they are trying to limit risk.

In any event, a mixture of anger, frustration and feelings of betrayal lingers over Lufkin and other little logging towns nearby. That contrasts sharply with the spirit of optimism in such places a few years ago. Surrounded by abandoned paper mills and shut-in oil wells, these people had turned to the big-city bankers for help. Their own little banks were pressed for funds to expand, and the "friendly bankers" down at First RepublicBank and First City were offering to be helpful.

"The banks promised big stuff," says Roger Mercer, a Nissan dealer here.

And for a time they delivered, opening a spigot of easy credit that created a building boomlet and changed the face of these backwoods towns. Apartment complexes, motels and a country club soon sprouted around Lufkin. There was even talk of turning the area into a tourist mecca using Lake Sam Rayburn, the state's largest man-made lake, as a playground.

Alas, the "boys up in the glass tower," as locals now derisively call them, changed their tune. "They took virtually everything out of the control of the local banks," Mr. Mercer says. The arm-around-the-shoulders friendliness that once greeted customers has given way to straight-arming strapped borrowers. Locals are whispering about a "hit list" of customers that First RepublicBank Lufkin is pressing for repayment.

Tractor Dealer's Trouble

First RepublicBank Lufkin recently summoned a Lufkin tractor dealer to the bank, where stone-faced accountants unfurled spread sheets showing the mortality rate of firms in his industry. It didn't matter that his loans were current. His company had lost money for two years running, and the odds were stacked against him. Bankers whom the businessman had never seen before said they would have to cut his credit line to $50,000 from $1 million. He was stunned: Without the big credit line, he couldn't finance his inventory, and sales would shrivel.

The tractor dealer eventually found financing at a small, locally owned bank and a large, out-of-town credit company. But he's still fuming. "The dang thing that hacks me off is that all of a sudden I was a statistic and not an individual," he says.

Roger Ellis fears that soon he will become a statistic. For months, the 45-year-old construction contractor has been conducting a self-styled liquidation because First RepublicBank Henderson refused to refinance a $250,000 loan. Mr. Ellis recently sold an excavator, two bulldozers and several trucks to cut his debt to $130,000. But he had to lay off 20 of his 25 workers, and one supplier is suing him for unpaid bills. Meanwhile, he is again digging trenches with his backhoe during the day and going sleepless many nights worrying about his debts. "I feel like I've had all the wind knocked out of me," Mr. Ellis says. "I've been whipped down."

Local bankers acknowledge that corporate officials at First RepublicBank in Dallas have ordered all outlying banks to cut some commercial and real-estate lending. "The pressure is there to identify the problems," says H.J. "Jay" Shands III, the bank's 33-year-old chief executive whose family ran the Lufkin bank before First RepublicBank bought it. And he concedes that the bank's new owners, hard-pressed for deposits (federal regulators are pumping between $2.5 million and $3.5 million into the chain's banks each week), are enforcing credit policy rigidly.

"Our policy book was just as thick before the bank was sold," says Mr. Shands, pointing to a three-ring blue binder. "The only difference was we never read it."

Edgar and Gilbert Burton wish they never had. The two Lufkin chicken farmers filed their bankruptcy petitions last month after First RepublicBank Lufkin refused to lend them the $500,000 they needed to feed their 750,000 chickens and meet other obligations. The brothers already owed the bank $2.5 million, and local officials told them that another loan would exceed the Lufkin bank's legal limit. They were told to plead their case with corporate officials at First RepublicBank Dallas, whose now-defunct agricultural-loan division had once lent the funds to purchase a second chicken ranch and just about anything else they wanted.

But their pleas fell on deaf ears. First RepublicBank Dallas "was broker than I was," Edgar Burton says. "If I had any money, they would have wanted to borrow it."

Whole Town Upset

The hard line taken by "the boys up in the glass tower" is riling the whole town. In the midst of a meeting, a Lufkin attorney suing First City gets a call from a stunned physician who says one of the banks just ordered him to repay a $10,000 note. The lawyer fuels the flames. "These damn people in Houston and Dallas sure are fangling things up, aren't they?" he says.

Charles S. McIlveene, the pastor of Lufkin's First Baptist Church, says donations had dropped so much that he held off filling two staff openings. Concerned about the church's ability to pay for a $3.5 million expansion, the church opted for a three-year note on the project rather than a shorter term.

The credit squeeze is also creating emotional strain. The manager of Lufkin's Waldenbooks says that the store frequently runs out of "Overcoming Depression" and that tapes on how to deal with stress are a hot item. Local psychotherapists say cases of stress and family tension are soaring. Edgar Burton concedes that at first he was deeply depressed watching the family's business collapse after 33 years. "I've done my crying," he says.

Mr. Shands, the banker, is acutely aware of the pain his bank's credit squeeze is creating in Lufkin. "It hasn't been pleasant," he says. "I wish I'd been a schoolteacher."

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 12
DATE 3/6/89
BILL NO. HB 151

Isabel

first national bank
glasgow, montana

TELEPHONE 406-228-8231 • P. O. BOX 191 • ZIP 59230

Troy
Wisdom
Manida
Augusta
Sunburst
Darby
Pablo
Gardner
Lodge Grass

Drummond
Milltown
Somers
Hot Springs
Lakeside

14

MARCH 6 1989

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 13
DATE 3/6/89
BILL NO. HB 191

TESTIMONY BY PAUL D. CARUSO, CHAIRMAN OF THE FIRST SECURITY BANK OF HELENA BEFORE THE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE IN FAVOR OF HOUSE BILL #191 TELLER FACILITY EXPANSION OF BANKING IN MONTANA.

FIRST: WE ALL MUST UNDERSTAND HB #191 IS DESIGNED TO SERVICE THE CONSUMERS OF ALL OF MONTANA. THIS IS NOT DESIGNED TO BE FOR THE BETTERMENT OF THE BANKERS-JUST CONSUMERS.

THE MONTANA INDEPENDENT BANKERS' PRESENT THE BILL TO MONTANA COMMUNITIES FOR THEIR BETTERMENT AND CONVENIENCE. THE BILL WAS NOT WRITTEN BY JUST A FEW BANKERS, BUT WE ASKED THE PUBLIC IN DIFFERENT AREAS OF MONTANA WHAT THEY THOUGHT WAS NECESSARY FROM THEIR VIEWPOINT FOR FINANCIAL SERVICES NEEDED FOR THEM AND BY THEM IN THEIR TOWNS AND CITIES. WE SOUGHT OUT CONSUMER GROUPS FOR THEIR OPINIONS, NECESSITIES, AND REQUIREMENTS OF BANKING SERVICES. THIS IS THE BILL IN FORM THAT YOU HAVE BEFORE YOU TODAY.

SECOND: THE MONTANA INDEPENDENT BANKERS DID NOT TAKE INTO CONSIDERATION IN ANY MANNER HB #151, WHICH WAS PRESENTED BY THE MBA. WE FOUND THEIR LEGISLATION TO BE SELF-CENTERED FOR A SELECTED GROUP OF BANKERS WITH BRANCHING, MERGING AND TAX BENEFITS. MIB DID NOT AND WILL NOT ADDRESS, NOR APPROVE THEIR PURPOSED LEGISLATION, IN OUR BILL. MERGER DOES NOT BENEFIT THE CONSUMER OR PUBLIC FOR ANY PURPOSE IN MONTANA.

THIRD: MIB BILL #191 DOES NOT REDESIGN THE BANKING SYSTEM IN MONTANA. IT WILL GUARD AGAINST UNDUE CONCENTRATION, AND BE EQUITABLE, UNBIASED AND HONEST TO ALL BANKS AND BANKERS IN MONTANA. WHETHER THEY ARE INDEPENDENT BANKERS OR CORPORATIONS, HOLDING COMPANY ASSOCIATIONS, STATE BANKS AND NATIONAL BANKS DOING BUSINESS IN OUR STATE OF MONTANA.

AS AN INDEPENDENT BANKER AND SUPPORTING THE MONTANA INDEPENDENT BANKERS GROUP, I REQUEST YOUR CONSIDERATION TO COMPREHEND THE SUPPORT OF "DO PASS" ON HB # 191. THANK YOU. PAUL D. CARUSO

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 14
DATE 3/6/89
BILL NO. HB 191

My name is Mike Burr, I am the Senior Vice President of the First Security Bank of Kalispell.

Chairman Thayer and committee members, I am here today to speak in opposition to HB 151. As a native Montanan and a graduate of the University of Montana, I am not against changing our banking laws, nor do I feel Montana citizens in communities without banks should be denied local banking services. I do, however, feel very strongly that the branch banking language contained in HB 151 does not help Montanans. Being a banker in Montana is a wonderfull opportunity that we should be willing to preserve. In Kalispell's locally owned independent banks, most of the Senior Management positions are held by native Montanans and graduates of our University Systems. At Kalispell's Norwest and First Interstate banks all of the top management has been filled from outside Montana. Now why does HB 151 limit your children's or my or any future generations opportunity to be a successfull banker in Montana? The answer is simple. If banks are merged and consolidated, if unlimited state wide branching is allowed, the chance to manage a true bank and not a branch in Montana will decrease from 168 opportunities to however many branches exist after the out of state interests finish. Why, you may ask, is being a branch manager so bad? Well, lets see who really does the managing. As we know, most of the credit decisions in the Norwest System are centralized in Billings and and even further away in Minneapolis. What true responsibility and authority will a branch manager have? Not a great deal I assume.

Furthermore, the American dream to own your own business, this time a bank, will be deminished substantially by unlimited branching.

ex. #14
3/6/89

Idaho, for example, has approximately the same population as our state. Idaho has had branch banking for many years. Idaho bank ownership has been reduced to just 25, Montana still has 168. Therefore, 168 opportunities

for local ownership

exist in Montana to be a President of a bank versus 25 chances in Idaho. The amendments to HB 151 prohibit the First Bank System and the Norwest System from branching, even if this bill is passed. This may be discriminatory and could be challenged in Court, which would then allow these outside interests to fully penetrate any opportunities left for the present and future generations of our state.

In closing, you will also be considering HB 191 which allows for banking services in Montanan's unserved communities. Isn't this a better way to benefit our fellow citizens and still preserve the great banking opportunity in Montana for your children, my generation and the future generations of our state.

SENATE BUSINESS & IND
EXHIBIT NO. 15
DATE 3/6/89
BILL NO. HB191

HB-191

1. Unnecessary with passage of HB-151.

2. Consumer facilities too restrictive to be convenient or profitable.

   A. Extended teller facilities services too limited
      1. Cashing checks ok
      2. Making deposits ok
      3. Need approval DOC to make loans
      4. Cannot provide safe deposit boxes
      5. Cannot assign account numbers
      6. Cannot open escrow accounts
      7. Cannot make money making change

   B. Extended teller facilities placements too restrictive
      1. Limited to within 10 miles of any other bank or S&L. (East Helena, Pablo, etc. go with out)
      2. Cannot go beyond 25 miles unless within county.
      3. How can banks compete with Federal S&L's and credit unions who can go anywhere?
      4. A credit union located its facility next door to a bank in Kalispell.

   C. Detached drive-up teller placements too restrictive
      1. Allows 3,000 feet placement from bank in Billings & Great Falls.
      2. All other towns still restricted to 1,000 feet limit.
      3. Cannot place drive-up within 200 feet of a S&L.
      4. Restricts banks ability to compete with Federal S&L's who are not subject to state law.

   D. Automated teller machines placements too restrictive
      1. Limited to 25 miles unless within county.
      2. Retains 200 & 300 feet space limits
      3. ATM's usually shared - space limits unnecessary

3. Extended Teller Facilities are branches.
   A. Page 2, Line 6-9; detached facilities do not "harm public policies underlying Montana's unit banking laws."
      1. Page 8, line 12-14; what is the difference between an EFT (with loan authority from DOC) and a branch? Does such a "facility" harm public policies?
      2. Illogical and contradictory.

4. "Main Banking House"
   A. Page 6, lines 21-24; definition not practical as many banks do not have directors with "full voting authority over all lending decision" so as to avoid fiduciary liability and thereby attract successful people to serve on Boards.

5. Discriminates against one small state chartered S&L in Great Falls. Includes Federal S&L's, however they are not subject to state law so they didn't even bother to oppose the bill.

CONCLUSION:

HB-191 provides very limited bank services to consumers and no profit incentive to construct extended facilities. As amended it contradicts the intent of the bill to restrict extended facilities to teller services only. It still tries to restrict competition in today's deregulated financial market and provides no means for banks to become more competitive. Please <u>DO NOT pass HB-191</u>.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 16
DATE 3/6/89
BILL NO. HB 191

COMPARISON OF HB-151 & HB-191

		HB-151	HB-191
1.	Supported by majority of banks	Yes	No
2.	Helps small banks in small towns survive	Yes	No
3.	Provides small towns full service branches	Yes	No
4.	Requires local advisory boards	Yes (Branches)	No (Extended Teller Facilities)
5.	Allows all banks to merge	Yes	No
6.	Enhances competition and greater convenience	Yes	Slight
7.	Effect on Economy	Significant	Slight
8.	Expansion of branches vs. extended teller facilities	Any barren town in county or adjoining county	Any barren town in county or 25 miles from bank but not within 10 miles of a bank or S&L.
9.	Services required in branches vs. extended teller facilities	All services offered at bank	Deposits & check cashing only (Lending must be approved by state. Safe deposit boxes, etc. prohibited.)
10.	Effect on Jobs	Increase (More efficient = more competitive = more business = more jobs.)	Slight increase (No incentive to construct multi-thousand $ facility without lending authority.)
11.	Effect on Taxes	May increase (Simultaneous merger required and all NOL's forfeited. More efficient = more business = more profits = <u>more taxes</u>.)	May decrease (Extended teller facility in adjoining county does not pay taxes to that county. Less efficient = less business = less profits = <u>less taxes</u>)
12.	Expansion of detached drive-up, walk-up facilities	One per bank up to 3,000 ft. <u>beyond city limits.</u>	One per bank up to 2,000 feet or up to 3,000 <u>feet from banks</u> in Billings & Great Falls.
13.	Expansion of automated cash machines	Any place in county or adjoining county	Any place in county or within 25 miles of bank, S&L, credit unions.
14.	Restrictions on Savings & Loans Associations (Savings Banks)	No change	Prohibits branching
15.	Interstate banking	No	No
16.	Statewide branching in towns with banks	No	No
17.	<u>Out-of-state</u> banks (First Bank, Norwest, 1st Interstate Bancorporation) allowed to buy a failed bank and branch	No	No
18.	<u>Out-of-state</u> banks allowed to branch vs. extended teller facilities in barren towns?	No	Yes
20.	Local directors required for branches vs. extended teller facilities.	Community advisory Board with majority from county.	None Required

(Prepared by Montana Bankers Association)

HOLLAND & HART
ATTORNEYS AT LAW

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 17
DATE 3/6/89
BILL NO. HB 191

MEMORANDUM

TO: Montana Bankers Association

FROM: HOLLAND & HART
Mark D. Safty
David R. Chisholm

DATE: March 2, 1989

RE: Branch banking based on state savings and loan branching powers

---

You have requested a review of recent federal court and Office of the Comptroller of Currency ("OCC") decisions allowing national banks to branch to the extent state chartered savings and loans are allowed to branch. As you know, the OCC regulates national banks including the power to approve branching.

At the outset, it is necessary to note that the McFadden Act (12 U.S.C. §36) controls the power of national banks to branch. The McFadden Act provides that a national bank may establish and operate branch banks to the extent "state banks" are authorized by state law to establish and operate branches. 12 U.S.C. §36(c). As used in the McFadden Act, "state bank" specifically includes trust companies, savings banks or "other such corporations or institutions carrying on the banking business under the authority of state laws." 12 U.S.C. §36(h). The purpose of the McFadden Act is to maintain competitive equality between the state and national banks. See First National Bank of Logan v. Walker Bank and Trust Company, 385 U.S. 252 (1966).

In recent years, the OCC has interpreted "state banks" as including, in certain circumstances, state chartered savings and loans. To insure competitive equality for national banks when state chartered savings and loans are major participants in a state's financial industry and are allowed to branch, the OCC has allowed national banks to branch. See Decision of the Comptroller of Currency on the Application of Deposit Guaranty National Bank, Jackson, Miss., to establish a branch office in Gulfport, Miss. 4 OCC Qtrly. J. No. 3, at 69 (1985). The OCC reaches this conclusion by deciding state chartered savings and loans are, in certain cases, "state banks" under the McFadden Act.

The three primary federal court cases allowing the OCC's actions are Department of Banking and Consumer Finance of the State of Miss. v. Clarke, 809 F.2d 266 (5th Cir. 1987), Texas v. Clarke, 690 F.Supp. 573 (W.D. Tex. 1988) and Volunteer State Bank v. National Bank of Commerce, 684 F.Supp. 964 (M.D. Tenn. 1988). In each case, the OCC had determined that the respective state chartered savings and loans had powers much like banking powers and were therefore "state banks." The power to accept deposits and pay interest on accounts, offer checking accounts, act in fiduciary capacities, make personal loans, purchase, sell, lease and mortgage real and personal property and sell money orders and traveler's checks were powers supporting the OCC determination that the state chartered savings and loans were "state banks" under the McFadden Act. See Department of Banking and Consumer Finance at 271; Texas v. Clarke at 576; Volunteer State Bank at 967. In addition, the Texas v. Clarke court noted that Texas statutes allowed state chartered savings and loans to engage in any activity in which federally chartered savings and loans could engage, including offering demand deposits, making commercial loans and making investments in tangible personal property. Texas v. Clarke at 576; citing 12 U.S.C. §1464. Montana has a similar statute. M.C.A. §32-2-111. Each of the courts upheld the OCC's authorization allowing national banks to branch to the extent state savings and loans in the respective states were allowed to branch.

However, it is important to note that none of the above federal court decisions are controlling authority in Montana. Rather, a federal district court sitting in Montana must follow the decisions of the Ninth Circuit. The Ninth Circuit in 1979 ruled that a national bank may not branch simply because a national savings bank could branch. Mutschler v. People's National Bank of Washington, N.A., 607 F.2d 274 (9th Cir. 1979).

The Mutschler decision is contrary to the recent cases discussed above and has been criticized by the OCC and other courts for failing to take in account First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969). Whether the Mutschler decision stands or not, it is an obstacle to the OCC in allowing a bank to branch in Montana.

In addition to the obstacle created by Mutschler, it is not likely that Montana state savings and loans present the economic challenge to banks in Montana that exists in jurisdictions where the OCC has approved branching based on the powers of state chartered savings and loans. In allowing the national bank to branch in Mississippi, the OCC noted that Mississippi savings and loans are extremely active financial institutions. In particular, the OCC noted that 12.2% of deposits in Mississippi savings and loans

ex. #17
3/6/89

were deposits in transaction accounts. Further, in a telephone survey relied on by the OCC, approximately 27% of households in Jackson, Mississippi, obtained some of their banking services from savings associations with 21 of 300 households surveyed having their primary checking account needs met by savings associations. See 4 OCC Qtrly. J. No. 3, 69. Recent information indicates that Montana savings and loans are not as strong a competitive presence in Montana. In particular, Montana chartered savings and loans hold only $40 million in assets and do not engage in significant branching. Since the state savings and loans are not strong competitive factors in Montana, the OCC is not likely encouraged to allow national banks to branch as in Mississippi, Texas and Tennessee.

Although a national bank could seek branching under the recent decisions, given the Mutschler decision and the OCC's reliance on state savings and loans being strong economic participants in the financial community as the basis for allowing national banks to branch, strong arguments exist that a national bank doing business in Montana would not receive permission to branch based on the branching powers of Montana chartered savings and loans.

TESTIMONY

March 6, 1989

Martin M. Olsson, Vice President, Ronan State Bank

Subject: House Bills 151 and 191

My name is Martin M. Olsson and I am a vice president with Ronan State Bank, a $50 million independent bank chartered in 1910. We support House Bill 151 and oppose House Bill 191 because we feel House Bill 151 will provide better services to our customers and the necessary tools to our banks to allow us to compete more effectively in the financial services industry.

You have heard often conflicting testimony regarding the level of the bankers support for these bills, but I ask you to recognize that this is not an issue between the big chain banks versus the small independent banks. There are many small, independent banks like us, as well as several large chains that support House Bill 151. There are also several banking groups that support House Bill 191 such as First Interstate of Billings (the third largest banking group in Montana), the Harris family, Jack King, Buster Schriber and Phil Sandquist who have ownership interest in more than one bank. Who can really tell who is truly an independent

ex. #18
3/6/89

bank or who is a member of a banking group? Even if we could tell, what difference would it make as long as the bank is competitively serving its market?

You have been told of chain banks that are not providing adequate levels of service to their communities, and from this you are asked to draw the conclusion that merger and consolidation is bad for banking in Montana. If this is true, what conclusions should be drawn from those independent banks that are not now adequately serving their communities? Does this mean that independence is also bad for banking in Montana? Or perhaps we should look to providing more competition in banking and allow those community banks that can provide convenient, competitive service to grow, while those banks both chain and independent that can't or won't provide adequate levels of service to their communities to fall by the wayside. This may sound a bit cruel, but isn't that how the rest of our economy works?

You have also been told that concentration of banking will result in fewer loans for Montanans in favor of out of state investments. I realize that I help manage a small community bank and that I do not understand the more sophisticated approaches of large banking, but in our shop good, bankable loans generate the majority of our income. I would guess this would also hold true for the larger banks and to remain <u>profitable</u> in a <u>competitive</u>

ex. #18
3/6/89

market, those banks will have to seek out the good, bankable loans. If they are unable or unwilling, they should be replaced by a bank that will. Again, competition not legislation should be the key to better banking services.

It is time to set aside the age old rivalry between a few strong willed and vocal bankers and the so called "Minnesota Twins". This feud is counter productive to Montana's banking industry and is preventing us from facing the bigger problem posed from competition that is not as restrained. It is also time to end the protectionist banking environment that was designed to limit competition in hopes of reducing the risk of bank failure and recognize that well managed <u>competitive</u> banks will succeed while others may fail.

The success or failure of a bank, like any other business should be determined by how well the bank deilvers its services in its market area and how profitable those services can be managed in a competitive environment. House Bill 151 will help provide the competition, but the profitability will be determined by the ability of the individual banks management.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 19
DATE 3/6/89
BILL NO. HB 191

Montana Independent Bankers) Testimony Against
Fred Prevost, Lobbyist Intern) House Bill 151

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE ~~RECORD MY NAME~~ IS FRED PREVOST, I AM AN INTERN WORKING FOR THE MONTANA INDEPENDENT BANKERS. MIB HAS ASKED ME TO SPEAK TO YOU TODAY BECAUSE OF MY PERSONAL KNOWLEDGE OF ONE OF NORTH DAKOTA'S BANKING SERVICES. I WAS BORN AND RAISED NOT FAR FOM THE NORTH DAKOTA STATE LINE. DURING THE YEARS I WAS EMPLOYED IN THE OIL AND GAS INDUSTRY, I SPENT A GREAT DEAL OF TIME WORKING IN NORTH DAKOTA. WHEN ONE CROSSES THE STATE LINE AS OFTEN I DID, ONE NOTICES THAT IN ALMOST EVERY SMALL COMMUNITY THERE IS A BANKING FACILITY. THESE FACILITIES ARE KNOWN AS PAYING AND RECEIVING STATIONS; THEY ARE THE EQUIVALENT TO HB 191'S EXTENDED TELLER FACILITY.IN NORTH DAKOTA'S FACILITIES, BANK CUSTOMERS CAN MAKE DEPOSITS AND WITHDRAWLS,CASH CHECKS, MAKE LOANS PAYMENTS, ALL THE TRANSACTIONS THAT MAKE UP A MAJORITY OF A BANKS DAILY BUSSINESS. THE STATE OF NORTH DAKOTA HAS ALLOWED THE ESTABLISHMENT OF THIS TYPE OF FACILITY SINCE 1937. I'VE DONE SOME RESEARCH AND FOUND THAT AT PRESENT THERE ARE 75 PAYING AND RECEIVING STATIONS IN VARIOUS SMALL TOWNS AROUND THE STATE. IT IS VERY UNLIKELY THAT THESE COMMUNITIES WOULD HAVE ANY TYPE OF BANKING FACILITY IF ONLY BANK BRANCHING WAS ALLOWED. JUST AS IN MONTANA, SMALL NORTH DAKOTA COMMUNITIES LIKE ALEXANDER, NOONAN, AND KENMARE DO NOT HAVE ECONOMIES THAT CAN SUPPORT A FULL BRANCH. NORTH DAKOTA'S LAW ENABLES CONSUMERS IN SMALL COMMUNITIES TO HAVE THE BANKING SERVICES THEY NEED. MONTANA'S CONSUMERS COULD GREATLY BENEFIT FROM THE SAME TYPE OF BANKING FACILITY AND HB 191 PROVIDES THE STATE WITH JUST THAT. WE URGE YOUR CAREFUL CONSIDERATION OF WHAT MONTANA'S CONSUMERS REALLY NEED AND ASK THAT YOU GIVE HB 191 A FAVORABLE REPORT.

WITNESS STATEMENT

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 20
DATE: 3/6/89
BILL NO. HB 151

NAME: Keith L. Colbo

ADDRESS: 1037 Cedarwood; Helena, MT

PHONE: 443-4610

REPRESENTING WHOM? MT Independent Bankers

APPEARING ON WHICH PROPOSAL: H. B. 151

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? ✓

COMMENTS: See exhibit 21

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 21
DATE 3/6/89
BILL NO. HB 151

March 6, 1989
SENATE BUSINESS AND INDUSTRY COMMITTEE
10:00 a.m. - Room 410, Chairman, Gene Thayer

Darryl Meyer	Harry "Doc" McLane
Paul Boylan	Jerry Noble
Tom Hager	Cecil Weeding
J.D. Lynch	Bob Williams

I. Introduction - Keith Colbo representing the Montana Independent Bankers.

II. Testify in opposition to H.B. 151 - The Branching Bill.

III. Testimony to focus on three areas drawn from my experience as Director of the Montana Department of Commerce and as Chairman of the Montana State Banking Board for four years. While at the Department, I was able to stay detached from this issue.

  A) Montana bank structure performance

  B) Economic development in Montana

  C) Changes in Montana's financial industry and the costs and risks associated with those changes

IV. Montana Bank Structure

  A) The Montana bank structure has evolved to meet the particular needs of our state citizens and economy.

  B) It is a competitive playing field, not a tilted field as some would represent.

  C) The Montana banking industry has been and continues to go through some very difficult times.

    1.) Bank Closures

ex. #21
HB 151
3/6/89

2.) Bank Sales - Banks do sell

3.) Banks in trouble

4.) We are not out of the woods yet

D) We have survived intact with our bank structure suited to Montana.

E) Governors Council on Economic Development has recommended a review of the banking structure looking toward the availability of services - they did not endorse branch banking.

V. Economic Development in Montana

A) The evolving Montana economy -- Small business man and woman

B) I-95, The Montana Coal Tax Loan Program Adamantly opposed by the President of the Montana Bankers Association

C) Program Status

1.) Since inception, there have been $68 million in loan applications.

2.) $32 million invested in 202 loans

3.) 125 current loans outstanding, five delinquent all guaranteed by a federal program. Not a bad performance by any standard.

4.) Of the 200 loans, a full 160 or 80% have been initiated by one group of bankers, the independent bankers, and 40 or 20% by holding company banks.

5.) Availability of quality loans

6.) Holding company banks can cite equally

ex #21
HB 151
3/6/85

impressive numbers for Montana, indeed they should be impressive. They are driven by the state's needs, not by a particular bank structure. That is what you must consider, what changes need to be made to best serve the citizens and economy of this state.

7.) Report - Commercial Bank Lending Patterns and Economic Development in West Virginia (MT).

a.) Bank structure plays a role

b.) Attitude is determinate

8.) H.B. 151 is <u>not</u> a solution to loan ratios or lending attitudes.

VI. Changes in Montana's financial industry and the costs and risks associated with those changes.

A.) A bank application can be an expensive ~~and~~ time consuming & complicated process, costing as much as $25,000 and more.

B.) Merger proposals will require a similar process and cost as a bank application and similar diligence and consideration by the Department and the State Banking Board. Section 32-1-203 MCA

1) Need & De
2) Manage
3) Public In

C.) Detached facilities to serve consumers are a much simpler and less costly process already in place.

VII. Committee Considerations

A.) How will H.B. 151 affect consumers?

B.) How will H.B. 151 affect loan availability?

C.) How will H.B. 151 affect Montana's banking structure, particularly small communities?

ex. #21
3/6/89
HB151

D.) Where will bank resources be focused and decisions be made?

VIII. Conclude

A.) Montana's banking structure should be improved, not for banks, but for the consumers and to better serve the state as we know our needs. and economic structure.

B.) Our banks, all of them, have served us well. Changes to that structure should be made gradually so that the system can evolve in a logical and predictable manner.

C.) There is a better alternative to accomplish these goals than the singular act of passing H.B. 151 in its current form.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 22
DATE 3-6-89
BILL NO. HB 151

WITNESS STATEMENT

NAME: GARY B CARLSON DATE:

ADDRESS: P.O Box 1147 Helena MT 59624

PHONE: 442-3540

REPRESENTING WHOM? MBA/Anderson Jim Muehlenthaler

APPEARING ON WHICH PROPOSAL: HB 151

DO YOU: SUPPORT? XXX AMEND? ______ OPPOSE? ______

COMMENTS:
See attached - Exhibit 23

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 23
DATE 3/6/89
BILL NO. HB 151
Carlson

March 6, 1989

Testimony before the Senate Business & Industry Committee

House Bill 151 - Bank Restructure Act

Mr. Chairman & Members of the Committee

GARY B. CARLSON, CPA

SHAREHOLDER - ANDERSON ZURMUEHLEN & CO., P.C. CERTIFIED PUBLIC ACCOUNTANTS

I offer for your consideration an independent analysis of the MBA / MIB arguments prepared for the Montana Association of Counties, dated January 30, 1989. I believe this independent report supports the MBA positions.

Additionally, I have attached our response, dated February 22, 1989, to an Office of the Legislative Auditors letter dated February 9, 1989, addressed to Representative Glaser. I feel the positions reflected in my response regarding the filing of consolidated corporate tax returns will be supported by the Department of Revenue. The Office of the Legislative Auditor's analysis, in my opinion is fundamentally flawed regarding the filing of corporate income tax returns and should not be relied upon.

NOT A TAX BILL

It is important to note, House Bill 151 does not change any existing tax law or regulation, and does not add any new tax provisions.

I am available to answer your questions related to tax issues of bank merger.

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 24

DATE 3/6

BILL NO. HB 151 + HB 191

NAME: John Buchanan DATE: 3-5-89

ADDRESS: PO Box 1643 Gt Falls 59403

PHONE: 7610372

REPRESENTING WHOM? Fidelity S&L

APPEARING ON WHICH PROPOSAL: 191 & 151

DO YOU: SUPPORT? ________ AMEND? ✓ OPPOSE? ✓

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

Senate B+I COMMITTEE

BILL NO. HB 151 DATE 3/6/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
HB CARLSON	CLANCY	X	
Bruce Thomson	Helena	X	
Rey Manuel	Helena	X	
JERRY FOSTER	Dept of Revenue		
JOHN CADBY	MT BANKERS ASSN	X	
MARTIN M OLSSON	RONAN, MT	X	
MARK SAFTY	BILLINGS MT	X	
John "Bud" Lawrence	Worden, MT.	X	
[illegible]	Chinook, MT	X	
Jim [illegible]	Billings, MT	X	
[illegible]	[illegible], MT	X	
[illegible]	Billings, MT	X	
[illegible]	[illegible]	X	
Sam [illegible]	TROY MT	X	
EARL D. LOVICK	Libby	X	
GEORGE T. BENNETT	HELENA	X	
[illegible]	Glasgow	X	
Keith L. Colbo	Helena		X
Roger Tippy	Helena		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

SENATE B & I COMMITTEE

BILL NO. HB 191 DATE 3/6/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JOHN CADBY	MT BANKERS ASS		X
Marvin M. Olsson	Ronan, MT		X
~~John Witte~~	~~Poplar MT~~	~~X~~	
Bob Sigurdson	Chinook		X
John "Bud" Lawrence	Worden, MT.		X
Jim Bennett	Billings		X
[illegible]	Billings		X
John Witte	Poplar		X
[illegible]	[illegible]		X
MARK SAFTY	BILLINGS		X
EARL D. LOVICK	Libby		X
[illegible]	TROY		X
AB CARLSON	Clancy		X
Lynn Grobel	Glasgow		X
Roger Tippy	Helena	X	
Keith L. Colbo	Helena	X	
Wayne Gibson	Bozeman	X	
Bruce Gulick	Bozeman	X	
Larry S Moore	Cascade		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Business & Industry COMMITTEE

BILL NO. H.B 191 DATE 3/6/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Tom Dowling	Helena	X	
[illegible]	[illegible]	X	
Paul R. Carter	Helena	X	
Mike BURR	Kalispell	X	
Mert Malik	Conrad	X	
John Buchanan	Fidelity S&L		✓
Steve Browning	Helena		✓
FRED PREVOST	HELENA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Business & Industry COMMITTEE

BILL NO. 151 DATE 3/6/89

SPONSOR Swift

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Bruce Gulock	Bozeman		X
Wayne Gibson	Bozeman		X
Tom Dowling	Helena		X
Joe Shaw [illegible]	Helena		X
Frank [illegible]	Polson		X
Larry Moore	Cascade	X	
Matt Mattek	Conrad		X
[illegible]	HELENA		X
Mike Burke	Kalispell		X
John Buchanan	Fidelity		✓
Steve Browning	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.